



EMPLOYMENT TRIBUNALS

Claimant: Mr Stephen Taylor

Respondent: TRGB Ltd

RECORD OF A HEARING

Heard at: Norwich and Watford by video

On: 14/4/2025, 15/4/2025, 16/6/2025, and 17/06/2025

Before: Employment Judge Boyes (sitting alone)

Appearances

For the Claimant: Representing himself (Mark Loan, friend/support, in attendance on 14/4/25 only)

For the Respondent: Lisa Hatch counsel

RESERVED JUDGEMENT

1. **The Claimant resigned and was not constructively dismissed. As the Claimant was not dismissed, the complaint of unfair dismissal is not well founded and is dismissed.**
2. **The Claimant's complaint relating to unpaid holiday pay is well founded. The Claimant is entitled to be paid for a further 12.5 days in respect of untaken annual leave. The Respondent therefore made unauthorised deductions from the Claimant's wages in respect of holiday pay that was due.**

The case will be listed for a 3 hour remedy hearing, the details of which will be notified separately.

REASONS

1. I apologise to the parties for the delay in providing this Judgment and Reasons which has arisen as a consequence of health reasons.
2. The Claimant complained of constructive unfair dismissal and of a failure to pay holiday pay and arrears of pay. The Respondent denies all claims.

3. ACAS early conciliation took place from 12/4/2024 to 24/5/2024. The claim form (ET1) was lodged with Tribunal on the 20/6/2024. The Respondent filed a response to the claim (ET3).

The hearing

4. A preliminary issue arose at the commencement of the final hearing as to whether or not the claim was made in time and hence whether the Tribunal had jurisdiction to deal with it. Both parties were given time to consider the issue. After further consideration by the Respondent of the correspondence relating to the Claimant's resignation, the Respondent confirmed that it first saw the Claimant's letter of resignation on the 15/1/2024 at 18.30hrs. It therefore accepted that that was the date that the resignation took effect and the effective date of termination. Taking into account the necessary time adjustments for Early Conciliation, the claim was therefore made within the 3 month statutory time limit and so no issue arose as to the Tribunal's jurisdiction.
5. The Respondent made an application to admit further evidence. This was 5 pages of forwarded WhatsApp messages from Robin Hunter to Gary Bates. The Claimant objected to it being admitted. I admitted that evidence. This was because it was potentially material to one of the issues that I was required to determine and provided context to, and a fuller picture relating to, evidence already before the Tribunal. It was not excessive and there was adequate time for the Claimant to consider it and respond to it. I therefore considered that it was in the interests of justice to admit it.
6. The Claimant was initially accompanied by a friend, Mark Loan. The Respondent submitted that the Tribunal should direct that the Claimant be alone when giving his oral evidence, rather than have Mark Loan with him. I formed the view that this was appropriate given the factual disputes in this case. In particular, I had noted, when previewing the evidence prior to the hearing, that there was a disputed issue of fact relating to who had authored various correspondence and that there was a reference which included "ML" on some of that correspondence. I also bore in mind that this was a video hearing and, to preserve the integrity of Tribunal proceedings, that it was necessary that the Tribunal was sure that the Claimant was able to freely give his evidence without any involvement from a third party. Mark Loan therefore left the hearing when the Claimant was giving evidence and did not attend the remainder of the hearing. The Claimant did not request that he be accompanied by any other person instead.
7. The Claimant gave oral evidence. He adopted his statement. He was cross examined by the Respondent and asked questions by me to clarify his evidence.
8. The Respondent called Gary Bates ("GB") to give evidence. At the time of the Claimant's employment, he was the owner of the business. He has since sold his shares in the business but continues as a Director. He was cross examined by the Claimant and asked questions by me to clarify his evidence.
9. Both parties provided written closing submissions and made further oral submissions.

10. I reserved Judgment.

Documents

11. The Tribunal had before it a bundle of 411 pages (plus the five additional pages of evidence referred to above), witness statements and written closing submissions from both parties.

Issues to be determined

12. No List of Issues had been prepared prior to the hearing. In consultation with the parties, I therefore prepared a List of Issues on the first morning of the hearing. In relation to the constructive unfair dismissal claim, the issues identified were:

12.1 Unfair dismissal

12.1.1 Was the Claimant (constructively) dismissed?

Constructive dismissal

12.1.2 Did the Respondent do the following things:

12.1.2.1 Bully and harass the Claimant whilst he was on sick leave in particular by Gary Bates visiting the Claimant at home and causing other employees and third parties to visit him at home/giving those individuals his home address;

12.1.2.2 Breach confidentiality by giving out his home address to others;

12.1.2.3 Bully and harass the Claimant whilst he was on sick leave by Gary Bates saying that the Claimant was causing him and his partner stress;

12.1.2.4 Bully and harass the Claimant whilst he was on sick leave by accusing him of being on holiday abroad whilst he was off sick;

12.1.2.5 Fail to provide the Claimant with employment related policies and procedures despite the Claimant requesting these;

12.1.2.6 Breach confidentiality by informing others of the Claimant's personal situation/health condition;

12.1.2.7 Threaten to withhold sick pay and threaten to dismiss the Claimant if he did not adhere to the law;

- 12.1.2.8 Ignore the Claimant's grievances in relation to the way in which the work was managed (that is that it was unmanageable and inefficient);
 - 12.1.2.9 Advertise the Claimant's job whilst he was on sick leave;
 - 12.1.2.10 Fail to pay the Claimant sick pay and holiday pay that was due;
 - 12.1.2.11 Gary Bates stated that the Claimant was the sort to have mental health issues;
 - 12.1.2.12 Refuse to discuss issues with the Claimant;
 - 12.1.2.13 Block the Claimant's telephone number so that he could not communicate with the Respondent whilst he was on sick leave.
- 12.1.3 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
- 12.1.3.1 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; and
 - 12.1.3.2 whether it had reasonable and proper cause for doing so.
- 12.1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
- 12.1.5 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
- 12.1.6 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 12.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?
- 12.3 Was it a potentially fair reason?
- 12.4 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative

resources, in treating that reason as a sufficient reason to dismiss the Claimant?

- 12.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
13. Remedy for unfair dismissal
- 13.1 Does the Claimant wish to be reinstated to their previous employment?
- 13.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- 13.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 13.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 13.5 What should the terms of the re-engagement order be?
- 13.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 13.6.1 What financial losses has the dismissal caused the Claimant?
- 13.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 13.6.3 If not, for what period of loss should the Claimant be compensated?
- 13.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 13.6.5 If so, should the Claimant's compensation be reduced? By how much?
- 13.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 13.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it by [specify alleged breach]?
- 13.6.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

- 13.6.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
- 13.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- 13.6.11 Does the statutory cap of fifty-two weeks' pay or £105,707 apply?
- 13.7 What basic award is payable to the Claimant, if any?
- 13.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?
- 14. Holiday Pay (Working Time Regulations 1998)
 - 14.1 Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when their employment ended?
 - 14.2 What was the Claimant's leave year?
 - 14.3 How much of the leave year had passed when the Claimant's employment ended?
 - 14.4 How much leave had accrued for the year by that date?
 - 14.5 How much paid leave had the Claimant taken in the year?
 - 14.6 Were any days carried over from previous holiday years?
 - 14.7 How many days remain unpaid?
 - 14.8 What is the relevant daily rate of pay?
- 15. Unauthorised deductions
 - 15.1 The Claimant confirmed that the arrears of pay sought are holiday pay. Did the Respondent make unauthorised deductions from the Claimant's wages by failing to pay for holiday accrued and not taken and, if so, how much was deducted?

Findings of Fact

- 16. Where there is no dispute between the parties as to a particular fact, my findings of fact are recorded below without any further explanation. Where the facts are not agreed by both parties, I have explained why I prefer one party's account over the other. Where the facts are not clear, I have explained why I have made the finding of fact concerned.
- 17. My findings of fact are as follows:
 - The Respondent**
- 18. The Respondent's business is classic car restoration. The business was founded by GB in 1986. GB was, at the relevant time, the owner and Director of the business. It is a small family business which had around 9 members of staff when the Claimant was

employed. GB's wife, Leanne Bates ("LB"), also works within the business. Stephen (Steve) Brocklebank ("SB"), who is GB's stepson, manages the workshop. The Respondent's business premises is in Somersham which is about 6 miles from the Claimant's home in Chatteris.

The Claimant

19. The Claimant was employed by the Respondent as a classic car fitter. He worked 40 hours per week, 8 hours per day. His employment began in May 2021. His employment ended on 15/1/2024.
20. There is an unsigned copy of the Claimant's terms and conditions of employment, with the Respondent's grievance and disciplinary policies appended, in the bundle.
21. Within the premises, the Claimant had his own work area which had previously had some minor improvements paid for by the Respondent in response to the Claimant's requests.
22. Prior to his employment with the Respondent, the Claimant had worked as a civil engineer and a landscape gardener. He had not previously worked in the classic car restoration sector.
23. There has never been any criticism of the Claimant's work by the Respondent. The Claimant was well thought of as a fitter, and the Respondent has confirmed that his work was very good.

Chronology of Events

24. On 21/06/2023, the Claimant left the Respondent's premises during the course of the working day. This was the last day on which he was in work prior to his employment ending.
25. GB was not on site when the Claimant left the premises. He sent the Claimant a WhatsApp message on the evening of 21/6/2023 stating that he should not have just walked out of work and that, as had been recommended by a colleague before he left, he should have just moved on to something else (another task), until he felt calm enough to carry on with what was a tricky task. He asked the Claimant to call him in the morning so that they could discuss the matter and what had happened. In response, on the 22/6/2023, the Claimant stated that he disagreed, he had not left because of the issue with the car. He then raised a range of issues relating to the allocation of work and management of the workshop. He stated that he had "*reached boiling point*" and "*thought its best I go*".
26. The Claimant stated in live evidence that he was not sure what time he left work on that day as he was quite upset. He also confirmed that he had not fallen out with GB or LB.
27. GB replied stating that he did not agree with what the Claimant was saying. He stated that he had spoken to SB three times about the Claimant moving on to another part of the job but was told that the Claimant refused. He said that the Claimant could have

called him instead of walking out and has not called him since. He said that he thought there was another agenda. He asked the Claimant why he would not speak to him and to call him. The Claimant replied that he had broken his phone and only had a tablet.

28. The parties' explanations differ significantly as to what the trigger was for the Claimant leaving work on the 21/6/2023.
29. According to the Claimant, on 21/6/2023 he was required to work on a car by a deadline, but essential parts could not be located. When he approached SB, he was unable to identify where the parts were and instead produced a bucket containing assorted nuts and bolts. The Claimant says the task was effectively impossible because the parts required for assembly had been lost or misplaced during the dismantling process. The Claimant's case is that he did not walk out because he was unable to fit the doors to a car, as the Respondent alleges. Rather, he says the incident was the culmination of a long-standing and unresolved problem within the workshop, namely poor management by SB, missing parts, conflicting priorities, disorganisation and unrealistic deadlines.
30. The Claimant states that this was merely the latest example of a recurring problem which he had repeatedly raised with management over the previous two years. He describes continual issues with missing or sold parts, conflicting instructions from GB and SB, and the assignment of deadlines for work which could not realistically be completed. He says that after SB unsuccessfully attempted the task himself, shouted at him and stormed off, the accumulated stress and frustration became overwhelming. He therefore left the premises and went home.
31. In his communications immediately afterwards, the Claimant maintained that the issue was "nothing to do with fitting doors" but rather "the lack of parts", which made it "impossible" to carry out his work and caused significant stress and anxiety. He characterised his departure as the result of years of ignored complaints about workshop organisation and management.
32. The Respondent's case is that the Claimant walked out because he became frustrated whilst carrying out a difficult task involving the assembly of two doors on a restoration vehicle. He was having difficulty with the job and became increasingly frustrated. Other staff attempted to help him locate the relevant parts and, according to the Respondent, the Claimant was encouraged to leave the task and move on to another aspect of the vehicle until he had calmed down. The Respondent alleges that he refused to do so. The Respondent denies that there was any fundamental problem with workshop management or organisation and says the Claimant's criticisms of SB are unfounded.
33. The Respondent's case is that there was no heated confrontation with SB. Rather, the Claimant lost his temper, had an outburst, stormed out of the workshop and announced to colleagues that he was leaving and did not intend to return. Staff subsequently reported this to GB.
34. GBs' evidence was that he considered the Claimant's conduct to be a reaction to frustration at a difficult task, and that if the Claimant had contacted him, or simply

moved onto another job as suggested, the situation could have been resolved. The Respondent therefore characterises the walkout as an impulsive and disproportionate response by the Claimant rather than the product of any systemic workplace failing.

35. Having considered all of the evidence before me, including the witness evidence of the Claimant and GB, I find that the direct trigger that resulted in the Claimant walking out was a frustration with the job that he was undertaking, in particular, that he did not have the parts needed. I found GB to be a credible witness and I accept his evidence that he obtained feedback others who were present about what had happened on that date. I accept his evidence that it was suggested to the Claimant that he was told to move on to another job, but he declined to do so. In reaching this conclusion, I have taken into account what is recorded in contemporaneous messages shortly after the event and all of the evidence before me in the round. I accept that the Claimant may have harboured other frustrations about the systems of work and the way certain matters were managed but it is clear that it was his frustration when carrying out that particular job that caused him to, in his own words, to have “*reached boiling point*” and walked out.
36. When cross examining GB, the Claimant asserted that he had left the workshop on 21/06/2023 because he was fearful of SB. No such suggestion had been made previously by the Claimant. It is not mentioned in his WhatsApp messages sent immediately after he left the workshop on the 21/6/2023, in his subsequent correspondence, in his resignation letter, in his claim to the Tribunal or in his own evidence to the Tribunal. I have formed the view, having considered all of the evidence before me, that there is no basis for this assertion by the Claimant. If there had been any basis for it would have been mentioned sooner.
37. There was an exchange of several further messages between the Claimant and GB. I find that, on the bare reading of those messages, it did appear as though the Claimant had resigned. I say that because the Claimant stated in one of those messages that “*I never wanted to leave Garry its left me without a job in this current economic climate very tricky*”. It is difficult to see how this can be read in any other way given the reference to the Claimant having been left without a job. When the Claimant was asked about this in live evidence, he stated that he was not sure of the process at the time and thought he could be sacked for walking off site. I did not find that explanation convincing.
38. I find that it was understandable that GB thought that the Claimant had resigned at this stage given what the Claimant had said in the message. The Claimant also stated that he did not feel that any of the problems that he faced had ever been addressed. GB replied that the Claimant had not been dismissed and that if he wanted his job back, he should come in at 9am and see him.
39. The Claimant tried to voice call GB via WhatsApp at 7.02pm.

40. On 23/6/2023, the Claimant sent a WhatsApp message stating that he was waiting for a call back from his doctor so he would not be in work that day. GB told him to see his doctor and call him next week.
41. The Claimant sent a detailed four-page letter to GB on 24/6/2023. This was dropped off at the Respondent's premises by hand on the 26/6/2023. In it the Claimant states that "*I certainly do not want to lose my job*". He then provided a detailed account of what he says happened on the 21/6/2023, as well as about his various frustrations regarding the management of the business, in particular about the work being disorganised and chaotic. He requested that these concerns be investigated. He stated that he has found everything stressful and unpleasant and that he would remain off work pending a response relating to the investigation. There was reference to a sick certificate being enclosed with the letter. I have not been provided with that enclosure, but it seems likely that it was a self-certification certificate. The Claimant stated that he would return to work after further consultation with his doctor.
42. On 27/6/2023, GB wrote to the Claimant acknowledging receipt of his sick certificate. He stated that he was under the impression that the Claimant had decided to leave on 21/6/2023 but that maybe he was undecided. He stated that he needed to know what the Claimant's intentions were so would welcome a private meeting and was free on the following Friday morning. The letter was hand delivered to the Claimant's address. On 29/6/2023, GB messaged the Claimant to establish if he intended to come and see him on the following day.
43. On 29/06/2023, the Claimant was signed off as unfit to work by his GP until the 12/7/2023. This was on the basis of "*mental health issues (depression)*". Subsequent sick certificates were issued on 14/7/2023, 21/7/2023, 29/8/2023 and 27/12/2023 covering successive periods of sickness absence through to 26/1/2024.
44. The Claimant messaged GB stating that he was not available for meetings as he had been signed off sick. GB replied that he was still very unclear as to the Claimant's intentions. He stated that if the Claimant had resigned, which had previously given him every indication that he had, he could not legally pay him statutory sick pay as he had to abide by the law. He therefore asked whether the Claimant intended to return to work or whether he had resigned.
45. There is a letter from the Claimant to GB dated 29/06/2023. In that letter, he stated that at no point had his resignation been tendered. He stated that the position was quite the opposite as evidenced by him advising the company of his absence for health reasons. He stated that this was further evidenced by the fact that he had not removed his tools from the workshop and as he informed the Respondent on 23/06/2023 that he would not be in the office as he was expecting to see his doctor. The Claimant then stated that he had been advised to avoid stressful situations and so he would prefer that telephone calls and messages from the Respondent were kept to a minimum and made only when necessary. He stated that he had found the tone of recent messages overwhelming which was not helping his current condition. He declined to attend a face-to-face meeting. GB replied by WhatsApp, stating that the letter was factually

incorrect. He stated that the Claimant had not communicated verbally with him at any point since he walked out and that he told more than one member of staff that he was leaving and not coming back. He states that they have always supported him as a company (especially his wife).

46. On the 3/7/2023, Robin Hunter ("RH") went to the Claimant's home address to visit him. He knocked on the door. The Claimant did not answer the door. The Claimant asserts that RH had not previously known his home address and so someone at work must have provided him with this information.
47. GB wrote a letter to the Claimant on 28/07/2023. I find that the letter was hand delivered on 28/07/2023 by a member of staff (Bob Cains) by posting it through the Claimant's letterbox. The Claimant stated in live evidence that he did not recall anyone knocking on his door when the letter was delivered. GB noted that the Claimant had been signed off sick until 27/07/2023 and, as they had not received a further medical certificate, they were expecting him to return to work on 28/07/2023. He stated that they would like to establish the reason his non-attendance at work from 28/07/2023. He stated that he had tried to speak to the Claimant and left a message, but he had not returned his call. He therefore asked that the Claimant contact him by 31/07/2023 to discuss the situation. He stated that unauthorised absence without good reason was a serious disciplinary offence which could result in disciplinary action being taken in accordance with the company's disciplinary procedure. He stated that the Claimant would not be paid for any unauthorised absence. He stated that if the Claimant did not wish to return to work after a sickness absence, he was required to give one week's notice of termination of employment and, if this was the case, that the Claimant confirm his resignation in writing as soon as possible.
48. There is a letter from the Claimant to GB dated the 28/07/2023. In it there is reference to his entitlement to SSP and a request that any outstanding payment be made immediately. It is stated that he did not receive any voicemail message from GB or anyone at the company and he had not left the UK. He stated that he does not answer calls from unknown numbers. He stated that he had not resigned. He asked that he be provided with a signed employment contract, including any offer letter and terms and conditions, the staff handbook and any other policies, and a copy of any document showing his receipt of such policies. There is a further copy of the same letter dated 31/07/2023. Neither the letter of 28/07/2023 nor 31/07/2023 bear the Claimant's handwritten signature. Both letters have the reference 'ML/25623/04' in the bottom right-hand corner.
49. On or around 31/7/23, GB sent a message to the Claimant. The main focus of the message was the Claimant's sickness absence. However, he also stated "I also note that from your ring tone when I tried to call you earlier that you are clearly not in the UK at present. This is not criticism, but just observation".
50. GB emailed the Claimant on 01/08/2023. He stated that the Claimant's letter was factually incorrect and that the Claimant had not communicated verbally with him at any point since he walked out. He said that the Claimant told more than one member

of staff that he was leaving and not coming back and his WhatsApp messages clearly indicated that he had left. Later in the email he states *"I know you are not well and I have always known that you have the potential to have mental health problems but I can't support you if you just walk out and refuse to even talk to me. I have always given you the best working conditions I can, and spent a considerable amount of money doing so. This situation is causing the company considerable damage and both Leanne and I have had many sleepless nights. You have at last informed me that you do not wish to leave and so I will pay you statutory sick pay. That is all I needed to know."*

51. On 09/08/2023, GB sent two WhatsApp messages to the Claimant. In one of the messages, he stated that he would respond to the Claimant's letter once the Claimant had signed it and posted it to him. He stated that he did not agree with most of the contents and that he was having a day off with LB who was upset by the whole situation and needed a stress free day. In the other message he stated *"The letter has not been signed by yourself, I'm not accepting a letter signed by third-party. IF the letter is from you then you can sign it"*.
52. GB wrote to the Claimant on 09/09/2023 requesting the Claimant's consent to obtain a full medical report from his doctor relating to his ability to perform his job and prognosis. He requested that the Claimant reply by the 22/09/2023 and stated that if they did not hear from the Claimant by that date, they would assume that he was refusing permission for a medical report to be obtained.
53. On the 19/09/2023, the Claimant replied stating that he was neither withholding authority nor granting authority. He stated that he had not received the documents he had requested twice previously and he requested that they be provided within 7 days. He alleged that the Respondent had already breached confidentiality by sharing his personal details with others without his permission including the reason for his current absence and his home address. He requested that the deadline for replying be extended by 60 days. The letter is 'pp'ed' by Jakarna Reta and bears the reference ML/25623/07.
54. On 22/09/2023, GB sent the Claimant a WhatsApp message stating that he would not respond to letters written by third parties. He stated that he did not have written authority from the Claimant appointing a third party and so legally could not do this. He stated that he refuted the allegations made by the Claimant in the previous letter. He stated that in future he would only accept any documents posted to the Respondent and signed by the Claimant or a qualified legal representative. He stated that he would not respond to any more texts or WhatsApp messages. He stated that he did not appreciate being contacted at midnight in this way and he was now blocking the Claimant's number. He requested that any future fitness for work certificates be sent by post and that if the Claimant required the previously requested handbook, then he needed to write and personally sign the letter. He then blocked the Claimant's telephone number.
55. GB wrote to the Claimant on 26/09/2023. He stated that they could not accept the request that he be given 60 days to consider his position made by an unauthorised

third party. He reiterated the reasons for requesting a medical report. He explained the reasons for blocking the Claimant's phone number. He requested that the Claimant reply in relation to the request for consent to obtain a medical report by 13/10/2023. He stated that if they did not hear from the Claimant by 13/10/2023 then they would proceed with their investigation based on the information before them.

56. The Claimant wrote to GB on 13/10/2023 maintaining his position that he was neither consenting nor refusing the request until he was satisfied that the Respondent would treat any medical report as confidential and he requested that he be provided with the documents referred to in his earlier correspondence. He requested the Respondent stopped attending his home address for the purposes of delivering mail or for any other reason. He asked why he was required to personally sign correspondence in which he requested a copy of his contract and other documents. He asked that copies of the documents either be sent to him by post at his home address or scanned and sent by email. He enclosed a letter from his GP dated 2/10/2023. He stated that the entire message was being posted to the Respondent, and since it is his personal email, the Respondent could be in no doubt that Jakarna Reta is authorised by him to sign letters on his behalf.
57. There is a GP letter dated 02/10/2023 which states that the Claimant had been diagnosed with moderate depression and anxiety, had been referred to the Psychological Wellbeing Service, was having Cognitive Behavioural Therapy and was seeing a counsellor every two weeks. His GP reported that he had been experiencing disruption in his sleep which appeared predominantly to be being triggered by receiving letters from his employer asking for medical reports and further updates about his mental health. His GP stated that it would be helpful if contact from his employer was kept to a minimum.
58. On 11/12/2023, GB sent a letter to the Claimant inviting him to an informal meeting on 19/12/2023 to discuss the contents of the GP letter of 02/10/2023, as well as to discuss any concerns that he has and to explore if and when he will be in a position to return to work. He was offered the opportunity to be accompanied at the meeting. He was warned that if he was not able to return to work in some capacity in the foreseeable future than one of the options that the Respondent would have to consider would be the termination of his employment on the grounds of long-term incapacity for work, which would only be as an option as a last resort.
59. On 18/12/2023 the Claimant wrote to GB. He stated that he had not received the letter of 11/12/2023 until 15/12/2023 and that the short notice was unreasonable. He made a further request for the documents. He then stated *"It would also be appreciated if you could confirm that during this "informal" meeting that you will finally respond to those grievances raised both prior to and during my period of absence leading to the stress and subsequent absence, which to date whilst you have acknowledged, you have not?"*
60. GB replied by email on 19/12/2023, suggesting a meeting on 16/01/2024. He stated that he would personally hand the Claimant a copy of his contract and staff handbook. He sent a further email to the Claimant on 03/01/2024 asking the Claimant to confirm

that he would be attending the meeting on 16/01/2024. He also pointed out that the Claimant's SSP would end on the 10/01/2024.

61. The Claimant wrote to GB on 12/01/2024. In live evidence, he stated that Mark Loan and others, including his partner and friends, helped him draft his resignation letter. In the letter, he stated that he would not be attending the meeting on 16/01/2024. He raised the issue of breach of confidentiality. He stated that there had been a recent incident in which he was approached by a member of GB's family who is not employed by the company and that individual questioned him on his state of health, absence from work and future intentions. He stated that the Respondent's continual reference to policy and procedure whilst at the same time refusing to provide access to such information was intimidating and bullying in nature. He felt continually harassed by such communication. He said that the Respondent had threatened to sack him via WhatsApp which has contributed to his anxiety. He referred to threats made to stop paying SSP. He stated that his grievance was continually ignored. He stated that there was no offer for him to have somebody with him as a witness to proceedings and this caused him further anxiety. He stated that attending the meeting was not in the interests of his well-being. He stated that his health has suffered as a direct result of the ignored grievance, subsequent bullying and harassment, the unwarranted and unpleasant correspondence and communication, the threats to his future income and work and the unwelcome attendance at his home address. He stated that for those reasons he was resigning.
62. In live evidence, it was put to the Claimant that he resigned exactly 28 weeks from when his SSP started. The Claimant replied that he resigned because he did not want to go to the meeting. I accept his evidence that this was what had triggered his decision to resign. It is however also the case that he referred to other reasons for resigning in his letter of resignation as noted above.
63. GB replied on the 16/01/2024. He stated that he would respond once he received the signed original in the post, noting that the emailed copy contained a computer-generated signature. He stated that he wanted to be there personally when the Claimant collected his tools which should be at a mutually agreed time and that he would be in touch once he received a signed letter in the post.
64. GB sent an email to the Claimant on 20/01/2024. He noted that the Claimant had still not sent him a signed letter. He refuted the allegation that the Claimant met a member of his family at a local retailer or that the Respondent had, in any way, breached confidentiality. He stated that the Claimant had previously been very open about his mental health problems. He stated that, as the Claimant had still not sent him a signed letter confirming his resignation, then he had no alternative but to accept his resignation on the basis of his email.
65. The Claimant's P45 was issued on the 24/1/2024.
66. The Claimant wrote to GB on the 26/1/2024 in response to the email of the 16/1/2024 and 20/1/2024.

- 67. GB sent an email to the Claimant on 29/01/2024 refuting the allegations made in the Claimant's letter and making arrangement for the collection of the Claimant's tools. He sent a further letter on the 30/1/2024 relating to the collection of the Claimant's tools.
- 68. There is an undated message from the Claimant in reply in relation to the collection of his tools. GB replied by email on the 30/1/2024. The Claimant replied in an undated message.
- 69. The Claimant emailed GB on the 1/2/2024 relating to claimed outstanding pay and holiday pay. GB responded on 3/2/2024 stating that the Respondent's records had been checked and the Claimant only carried over 3 days from 2023. A document was attached entitled 'Holiday Entitlement Reconciliation'.
- 70. There is an undated message from the Claimant in reply in which he stated that he was owed 14 days holiday pay.
- 71. On the 11/2/2024, GB sent an email to the Claimant in which he stated that their holiday records were correct.

Findings of fact -General matters

- 72. The Tribunal has been provided with a contract of employment with a disciplinary and grievance procedures appended [at 53-66]. The document provided to the Tribunal is not signed by either party. The Claimant's evidence is that he does not recall receiving a staff handbook or other terms and conditions whilst in employment. In live evidence, he stated that he had not seen the contract until the Thursday prior to the hearing. On further questioning, he accepted that electronic disclosure of the document had occurred some time prior to that, but that he had not looked at the electronic bundle.
- 73. GB's evidence was that the Claimant was provided with a copy of his contract of employment on or around 24/05/2021 when he signed for the health and safety handbook. The Claimant denies that this is the case. Mr. Bates gave clear evidence that he gave contracts to every member of staff, and the Claimant had never suggested prior to the 21/6/2023 that he had not received a contract. He stated that he would always print off the contract and staff handbook and give it to LB who would then give it to the new starter. He confirmed that there was no written record of this and that the company did not hold a copy signed by either party. He said that he could not remember if the Claimant had returned a signed copy and he should have chased him. He stated that he it was "incredulous" for the Claimant to say he did not have a contract and that surely after 2 ½ years he would have asked for one.
- 74. I preferred GB's evidence to the Claimant's evidence in respect of this issue. I found GB to be a credible witness. In general, his evidence was clear, internally consistent and balanced. I also noted that at the start of the proceedings (not whilst giving evidence) he offered information to the Tribunal, on the Respondent's behalf, as to the date that the notice of resignation was received, even though the information that he provided was not favourable to the Respondent.

75. It is agreed between the parties that over a period of over 6 ½ months that the Claimant did not speak to GB or meet with him at any point. During cross examination, when asked about why he had not attended any of the meetings arranged, the Claimant stated that he found GB “quite abusive” face to face. When asked in live evidence if he had ever fallen out with GB or LB, he confirmed that he had not. The Respondent submits that at no point during the 29 weeks that he was on sick leave did the Claimant ever suggest this to be the case. The Respondent submits that this new allegation was made in order to portray a negative picture of GB to the Tribunal and that this evidence also contradicted his evidence that, on the 21/6/2023, he was on good terms with both GB and LB and had not fallen out with them.
76. I found GB’s evidence to be given in a balanced and even-handed manner. I have taken into account that GB’s communications with the Claimant post 21/6/2023, whilst direct in manner at times, appeared measured and did not display any aggressiveness or abusiveness.
77. I have formed the view, having considered all of the evidence before me in the round, that there was no basis for the assertion by the Claimant that GB was abusive or aggressive towards him. On the contrary, the evidence before me suggests that he, and his wife, LB, took a patient and considered approach. I formed the view that the Claimant stated in live evidence that GB was “quite abusive” in an attempt to explain why he had not spoken to, or met with GB, over such a lengthy period. The evidence before me does not support the Claimant’s allegations in this respect, which were raised for the first time during hearing.
78. In cross examination, the Claimant at first rejected the suggestion that LB had gone out of her way to support him. However, he later accepted that LB had told him to go home whenever he needed to. I found on the evidence before me that GB and LB were supportive of the Claimant and did their best to provide a supportive work environment for him.
79. One issue that arises is whether communications said to be from the Claimant were coming from him or a third party. This is relevant because on the one hand the Respondent’s position is that GB was concerned about who he was communicating with and whether communications from the Claimant were made with the express authority of the Claimant. The Respondent submits that the Claimant went out of his way to conceal from the Tribunal, and from GB, the third party involved in preparing his correspondence. On the other hand, the Claimant submits that the Respondent failed to deal with issues raised in correspondence, in particular, he did not provide him with the various documents that he had requested.
80. During cross-examination, the Claimant was asked about the authorship of the letters sent to the Respondent. He was asked about various letters which had references beginning with “ML” on them. Initially he denied that the letters had anything to do with Mark Loan. He initially claimed that the “ML” references at the bottom of the various letters which were numbered from “ML/2523/02” to “ML/25623/16” were his own. He eventually conceded that Mark Loan had helped him write the letters,

explaining that he did not want to involve him. I found that the Claimant's evidence in respect of this issue to be inconsistent and evasive. He did not answer the questions asked of him directly and his evidence changed as he was questioned. Having considered the letters concerned and listened to the Claimant's evidence, I find that the letters were drafted, or substantially drafted, by Mark Loan. I also find, on the basis of the evidence before me, that the Claimant did not, at any point, inform GB that Mark Loan was assisting him.

81. The Claimant also stated in live evidence that his partner, a self-employed counsellor, had drafted some of the correspondence which was sent to the Respondent. At 23.59 on Thursday 21/09/2023, a letter was sent from the Claimant's WhatsApp account to GB. The letter was not signed by the Claimant but pp'ed by his partner. In the letter her name is spelt as "Jakarna Reta" rather than the correct spelling which is Jakana Rita. There is also an illegible signature. The Claimant stated in live evidence that he is not very good at spelling. I do not find it credible, and do not accept, the Claimant's evidence that he does not know how to spell his partner's name or that if his partner had pp'ed the letter that she would not have corrected the spelling of her name. The Respondent submits that it is likely that Mark Loan drafted the letter pretending to be the Claimant's partner. It is unclear to me on the evidence before me who actually drafted this letter, although it did bear the reference ML/25623/07 which does suggest that Mark Loan was involved in some way in producing it. However, whoever it was that drafted the letter, I accept that the Respondent consequently had good reason to be suspicious about the identity of the author and whether or not they were acting upon the Claimant's express authority.
82. GB had suggested to the Claimant that to allay his concerns about communicating with a third party, the Claimant could provide a signed letter of authority. In live evidence, the Claimant stated that he did not provide any such authority because GB was "after his signature". I do not accept that explanation and found no evidential basis for the assertion. The Claimant has signed documents for the Respondent on other occasions, as can be seen from the documentary evidence before me, including a form confirming receipt of the staff handbook and holiday request forms. The Respondent therefore had already had sight of his signature.
83. I asked GB, by way of clarification, why he had concerns about the author of the correspondence from the Claimant. He stated that he was not sure who he was dealing with. He said that it [the correspondence] did not ring true and he was concerned that someone else was involved. He knew the Claimant was not well, so he was in a difficult position. I asked him why he did not just post the documents that the Claimant had asked for to his home address. He replied that he could have done so, but that he thought that it was safer to hand the documents to him because he did not want to be accused of anything. He said that all he was asking for was a one line letter so that he could give him a copy of the contract. He stated that he still does not understand why the Claimant did not provide this and wondered whether there were periods when he was not at home. I found GB's evidence as to why he was cautious about his

communications with the Claimant to be entirely credible. Against the background of my other findings above, I accept GB's evidence he had those concerns.

Findings of fact - Did the Respondent cause others to visit to the Claimant's home /provide the Claimant's address to other employees/third parties?

84. Having heard evidence from GB and from the Claimant, I find that GB never visited the Claimant's home whilst the Claimant was off sick. The Claimant has not produced any evidence to demonstrate that he did visit his home address. I found GB's evidence in this respect to be convincing and credible.
85. I find that the only time that the Respondent provided the Claimant's address to anyone was when Bob Cains posted the letter of the 28/7/2023 through the Claimant's letterbox. I accept GB's unchallenged evidence that Bob Cains was involved in sorting out the Respondent's mail.
86. The Claimant asserts that GB gave out his home address to employees and third parties. In particular, the Claimant asserts that RH visited him at home after the Respondent informed RH that he was off sick and gave RH his address. In his witness statement he describes RH as "*one of Gary's business associates and delivery driver*".
87. The Respondent has provided a signed letter from RH dated 2/7/2024 in which he states that neither GB nor anyone else from the business asked him to visit the Claimant at home. He states that he went there of his own volition to see how he was. He says that he already knew where the Claimant lived and no one from the Respondent gave him his address. He states that he and the Claimant were quite friendly at the time as they have a common interest in VW cars.
88. The Respondent has also provided various WhatsApp messages from GB's account in which there are forwarded messages said to be between the Claimant and RH. This includes a message in which the Claimant asks RH if he can pick up his car from TRGB and transport it to Chatteris. GB's evidence was that RH had forwarded the various messages on to him.
89. In terms of the letter from RH, I place less weight on this evidence than if I had heard oral evidence from RH which had been tested in cross examination. However, I do place some weight upon it given the context and considering all of the other evidence before me in the round. Whilst the WhatsApp messages that have been provided are not dated and do not record RH's name in them, or the date that the original messages were sent, I place some limited weight upon them and have considered them alongside the other evidence before me. The Claimant has not provided any evidence to demonstrate that the GB suggested that RH visit him at home or that he provided RH with his address. I am satisfied that the evidence provided by the Respondent shows that the Respondent did not tell the RH that the Claimant was off work sick or give him his address. On the basis of the evidence before me, I find that the Claimant and RH were friendly with one another outside of the Claimant's employment and that RH knew the Claimant's address as a consequence of that, not because he was given the address by GB.

90. During the course of live evidence, the Claimant stated that he considered some of his colleagues “very good friends” (Mark Walker, Lee Morris, Fraser Unwin, Jason Wright and Wayne Huggins), that they knew where he lived and that they visited him at home whilst he was on sick leave.

Findings of fact - Did the Respondent inform others of the Claimant's personal situation/health condition?

91. The Claimant asserts that when he was visiting the Cambridge Lambretta shop, he was approached by a member of GB's wider family who asked him about his state of health and his intentions on returning to TRGB. The Claimant asserts that there was no way that that person could have known of his personal circumstances other than via the Respondent. GB's evidence was that this individual may have been Gary Harwood, who is not related to the GB but is a customer of the business. He stated that at no time during the Claimant's employment did he inform others of the Claimant's health condition or personal situation.
92. Whilst I have no reason to doubt that Gary Harwood said those things to the Claimant, the evidence before me does not show that Gary Harwood was told anything about the Claimant's personal circumstances by GB. As submitted by the Respondent, colleagues had witnessed the Claimant walking out of the premises on 21/06/2023, would have been aware that he had not returned to work after 21/06/2023 and was on sick leave. These were all matters that would have been known within the workplace. The Claimant also had friends from work visit it at home who would have been likely to have some awareness of his situation. It is entirely possible that Gary Harwood heard of the Claimant's circumstances by other means. It is for the Claimant to show that GB shared personal information about the Claimant with Gary Harwood and he has not done so.

Findings of facts-did the Respondent advertise the Claimant's job whilst he was on sick leave

93. It is not in dispute that the Respondent advertised the post of classic car fitter on 26/6/2023. GB's evidence is that they needed an additional fitter as well as the Claimant due to increased work within the business. At paragraph 12 of his witness statement, the Claimant also stated that there was a large backlog of work within the business. I have borne in mind that the post was advertised only a few days after the Claimant walked out of work. However, the evidence before me also demonstrates that the business was very busy and so it is quite credible that the business needed further fitters in any event. I formed the view that the evidence did not show that the position was advertised in order to directly replace the Claimant or that it was his job that was being advertised. I formed the view that it was likely that the decision to employ another fitter was made for a combination of reasons including an increased demand for the work the business did but also at the same time ensure that there was sufficient cover given that it was unclear until 29/6/2023 whether or not the Claimant had resigned.

Findings of fact - Did Gary Bates state that the Claimant was the sort to have mental health issues?

94. In a message sent in July 2023, after the Claimant had submitted a medical certificate on 14/07/2023 which stated that he was not fit for work because of “mental health issues (depression)”, Mr. Bates stated in a message, “[...] all the support we have given you (especially my wife) you know to be untrue. When you have been having a bad day she has always supported you in every way. I know you are not well and I have always known that you have the potential to have mental health problems but I can’t support you if you just walk out and refuse to even talk to me [...]”.
95. Whilst not in the exact terms expressed by the Claimant, I find that GB did state that “I have always known that you have the potential to have mental health problems”.

Findings of fact - Did GB refuse to discuss issues with the Claimant?

96. Taking into account my findings of fact in the chronology of event above, I am entirely satisfied and find as a fact that GB attempted, on numerous occasions whilst the Claimant was on sick leave, to engage in discussions with the Claimant. However, the Claimant declined any attempt to meet with GB and did not speak to GB either in person or by telephone at any point after he left the business premises on 21/6/2023. I therefore find on the evidence before me that GB did not refuse to discuss issues with the Claimant. On the contrary the Claimant declined to enter into discussions with the Respondent at any point during the 6 ½ months that he was on sick leave.

Findings of Fact - Did the Respondent ignore the Claimant’s grievances in relation to the way in which the work was managed (that is that it was unmanageable and inefficient)?

97. The Claimant asserts that the incident of 21 June 2023 was the culmination of a series of concerns which he says he raised informally during his employment and then formally once on sickness leave. His complaints can be grouped into several recurring themes which are: being given conflicting instructions and being accountable to both GB and SB; difficulties arising from missing, lost or sold parts; chaos within the workshop; poor management of the workshop by SB; health and safety concerns; a failure to address his complaints; and the [conduct of SB](#).
98. GB accepted that concerns and complaints were raised from time to time, but denied that they amounted to ignored grievances and maintained that management dealt with matters as far as reasonably possible.

Conflicting Instructions:

99. The Claimant complains that he was effectively accountable to both GB and SB, who frequently gave him competing priorities and deadlines. He says this created confusion, inefficiency and stress. He says that, for example, in January 2022, SB instructed him to prioritise a particular customer’s vehicle, whereas GB later instructed him to prioritise a different vehicle. When he followed GB’s instructions, SB challenged him about disregarding his own instructions. The Claimant asserts that this is a typical

example of the chaos within the workshop. In live evidence, he said that GB, SB and Richard Dempster would each direct him to different tasks, making it difficult or impossible to work efficiently. Whilst he accepted that a restoration business required flexibility, he maintained that the problem was not flexibility itself but being diverted from one task to another without any coherent management structure. He repeatedly described the workshop environment as "chaotic", "unmanageable" and "impossible" to work in efficiently.

100. GB accepted that on occasions priorities changed and that employees could be redirected onto different work depending on business needs. He accepted that there was at least one occasion when different managers may have directed the Claimant to different jobs, but characterised this as an inevitable feature of a small restoration business rather than evidence of poor management. He denied that the business was chaotic or disorganised and relied upon customer satisfaction, the company's reputation and positive reviews as indicators that the workshop was well run.

Missing or lost parts:

101. The Claimant asserts that vehicles were routinely dismantled without proper organisation, that parts subsequently disappeared or could not be located, and that he was then expected to complete jobs to deadline despite lacking the necessary components. The Claimant gave several examples of incidents involving missing parts in his witness statement.
102. GB accepted that the Claimant raised concerns regarding parts on numerous occasions. He also accepted that obtaining parts was a recurring issue within the classic car restoration industry. His position, however, was that this reflected the realities of restoring old vehicles rather than any management failing. He stated that parts were prioritised whenever available and that shortages, sourcing difficulties and the need to fabricate or refurbish components were inherent aspects of the business. He denied that missing parts were the true reason for the Claimant walking out.

Poor workshop management by SB:

103. The Claimant asserts that SB lacked the organisational, management and mechanical competence required for his role and that this caused disorganisation, unreasonable deadlines and unnecessary stress for workshop staff. He states that he raised these concerns with GB on numerous occasions before June 2023 but his concerns were never addressed.
104. GB denied that SB was a poor manager. He stated that no other staff members complained to him about SB's management. In relation to the incident involving Mick Faurage, Mr Bates accepted there had been an altercation but described it as a brief argument culminating in SB pushing Mr Faurage, who then fell. GB said the matter was dealt with at the time and he rejected the Claimant's characterisation of SB as violent or dangerous.

Health and Safety Concerns:

105. The Claimant says he raised several safety-related concerns. These were:

105.1 Track-rod end/steering rack issue: early in his employment, he discovered that nylock nuts had allegedly been reused on steering components. He reported this to GB. The Claimant was concerned that a vehicle could later fail and that his name might be associated with the work.

105.2 Brake work: in his letter of 24 June 2023, he complained that SB had carried out work on brakes without his knowledge, requiring him to re-check the system because of safety concerns.

105.3 Unsafe stores area: in the same letter he complained that the upstairs parts area was unsafe and difficult to access.

106. In live evidence, the Claimant reiterated concerns about SB undertaking work on vehicles allocated to him and referred again to the reuse of nylock nuts. His evidence was that he raised these matters because, if a vehicle later failed, his name appeared on the relevant job sheet. He was concerned that unsafe work could be attributed to him.

107. GB disagreed with the Claimant's assessment of the safety issues. In particular, he rejected the suggestion that reusing a nylock nut was inherently dangerous and stated that many mechanics would regard reuse as acceptable depending on its condition. He had no recollection of any significant complaint being raised about the matter.

Conduct of SB:

108. The Claimant alleges that Steve behaved aggressively towards staff and contributed to a hostile working environment.

109. The Claimant's evidence was that he repeatedly raised concerns about SB's management style and conduct. He complained that SB interfered with work allocated to him, created confusion about priorities, and was verbally abusive. The Claimant maintained that SB's conduct had been a recurring problem throughout his employment and that management did not adequately address those concerns. He also referred to the incident involving Mick Faurage, which he regarded as evidence of SB's behaviour. He referred to an occasion where SB allegedly told him that "working with you is like banging my head against a wall", which he characterised as bullying and harassment. He referred to the 21/6/2023, when he says SB shouted at him after being unable himself to identify the missing parts required.

110. In relation to the incident involving Mick Faurage, GB accepted there had been an altercation but described it as a brief argument culminating in SB pushing Mick Faurage, who then fell. GB said the matter was dealt with at the time and rejected the Claimant's characterisation of SB as violent or dangerous. I accept his evidence in this respect. Further, this incident did not involve the Claimant and it is not suggested that it was one of the reasons that the Claimant resigned. The evidence

before me does not demonstrate that there were any similar incidents involving SB, that the Claimant was ever threatened by SB or that there was a pattern of SB being threatening, hostile or violent towards other employees.

111. In cross examination, the Claimant put it to GB that he had left the workshop on 21/06/2023 because he was fearful of SB. This allegation arose for the first time in cross examination. There is no reference to such a complaint in his WhatsApp messages immediately after he walked out, in his subsequent correspondence, in his resignation letter, in his claim to the ET or in his evidence. The Claimant has, throughout these proceedings, provided a detailed account of his complaints. I consider that had a fear of SB caused him to walk out on the 21/6/2023 he would have referred to this in writing sooner. Consequently, I attach little weight to this allegation given that it was raised for the first time during cross-examination, and I do not accept that it was one of the reasons why the Claimant walked out.

Failure to Address Complaints

112. The Claimant's alleges that management acknowledged the existence of problems but failed to resolve them.
113. He asserts that throughout his employment there were numerous informal discussions with GB about missing parts, organisation and Steve's management style. He refers to at least three workshop meetings involving staff generally where the same issues were discussed. His complaint is not simply that the problems existed, but that he repeatedly raised them without meaningful change occurring.
114. In live evidence, the Claimant's position was that he raised the same concerns repeatedly over a long period. He said they were discussed in meetings and in conversations with GB but that nothing ever changed. He maintained that his letter of 24 June 2023 simply recorded concerns which had already been raised informally many times. He told the Tribunal that his concerns had been ignored, not heard and merely appeased.
115. In live evidence, GB accepted that the Claimant had brought various concerns to him and that workshop discussions took place. He accepted that the Claimant complained about missing parts, workshop practices and aspects of the way work was organised. However, he denied that the concerns were ignored. His evidence was that his office door was always open, employees were encouraged to raise issues with him, he looked into complaints whenever they were raised and that some matters could be resolved and others could not because of the nature of the restoration business.
116. His evidence was that the Claimant never raised a formal grievance before he walked out on the 21/6/2023. He stated that he tried to appease and solve the Claimant's concerns and did what he could to improve the Claimant's working environment. Examples he gave included changes to the Claimant's workspace, provision of equipment, and discussions outside the workplace, including taking him out for lunch to discuss his concerns. He stated that some of the issues raised, such as parts availability, could not simply be solved by management action.

117. It is accepted by GB that the Claimant did raise issues about missing parts, workshop practices and aspects of the way work was organised. I found GB to be a credible witness in this respect. His evidence was balanced, and he answered questions in a full and clear manner. His evidence was internally and externally consistent. I accept his evidence as recorded above in its entirety.
118. Having considered all of the evidence before me, including the witness evidence, I find that the Claimant did not raise any form of grievance before the 21/6/2023. I find that, in general, the issues that the Claimant raised were normal day to day matters that one would expect to arise in such a business. I accept GB's evidence that as and when issues were raised by the Claimant that they were addressed in so far as was possible in the ways that he has explained. Bearing in mind his very extensive experience of running a business restoring classic cars, I also accept his evidence that it was not always possible for every one of the Claimant's concerns to be addressed as that is the nature of the industry. I also prefer his evidence in relation to the health and safety issues raised by the Claimant given GB's very extensive experience in the industry which is far greater than the Claimant's experience.
119. The majority of the issues raised by the Claimant relate to the way that the business was run and managed. How the business was run was for the owners of the business to decide not for the Claimant to decide. Whilst the Claimant may not have agreed with how the operation was organised and managed, as an employee, that was not for him to determine even if he was of the view that certain practices created inefficiency and he found such practices frustrating.
120. In terms of the issues that the Claimant raises regarding SB's behaviour, I accept that SB may have said to the Claimant on one occasion that *"working with you is like banging my head against a wall"*. I do not, however, accept that such a comment in isolation comes anywhere near to meeting the threshold of amounting to bullying and harassment. In terms of the claim that SB shouted at the Claimant on 21/6/2023, after also being unable to identify the missing parts required, given how events unfolded on that date I accept that this may well have happened. However, it is also clear that the Claimant was also very frustrated and on his own account had "reached boiling point" on that date. It seems to me very likely that the atmosphere in the run up to the Claimant walking out was fractious and that both the Claimant's and SB's tempers may well have frayed. However, when considered properly in the context of what occurred on that date, I find that SB shouting at the Claimant when he could not identify the parts concerned did not amount to bullying or harassment. For the avoidance of doubt, I also do not consider that that was what prompted the Claimant to leave work on that date.

Findings of fact - sick pay

122. At section 10.1 of the Claimant's contract of employment, it states that the Claimant is entitled to SSP during periods of sickness absence and that any payment over and above SSP will be paid at the absolute discretion of the Respondent. It is clear from the communications between the Claimant and GB that the Claimant was paid SSP during his period of sick leave. In addition, payslips have been provided for the entire

period for which the Claimant was on sick leave and it can be seen that SSP was paid in each of those weeks as per his entitlement. The Respondent's position is that the Claimant was paid the SSP that he was entitled to. The Claimant has not pointed to any particular week in which he was not paid SSP during his sickness absence. I find that the Claimant has not shown that there was a failure to pay the SSP that he was entitled to during his sickness absence.

Findings of fact - holiday pay

123. The Claimant's holiday entitlement is dealt with at section 8 of his contract of employment. The Company's holiday year runs from 1 January to 31 December. His annual holiday pay entitlement was 20 days plus all statutory and other public holidays. Depending on how Christmas fell he was required to take some of these days over the Christmas period (normally 3 days). The Claimant was required to use all of his holiday entitlement by the end of the leave year unless there were exceptional circumstances and was not permitted to carry leave over into the next holiday year. It states that holiday entitlement not used by the correct date will usually be lost and no payment will be made for holiday that has been lost.
124. It can be seen from the holiday request forms that have been provided that the Respondent recorded that the Claimant was permitted to carry 3 days over from 2021 to 2022 meaning that he had 31 days entitlement in 2022. It is recorded on the holiday request form that the Claimant took 16 days annual leave and within those 16 days, 5 days' sickness were paid as annual leave. Taking into account bank and statutory holidays and time that the business was closed taken over the Christmas period the Claimant had no more than 3 day's leave remaining at the end of 2022. I say 'no more than' as there were two additional bank holidays in 2022 for the Platinum Jubilee and the state funeral of Queen Elizabeth II. It is not clear on the evidence before me how these days were treated by the Respondent in terms of leave. In any event, it can be clearly seen that the Respondent agreed that it was agreed that the Claimant could carry forward 3 days from the 2022 to 2023 leave year.
125. Whilst the Respondent asserts that it agreed that the Claimant could carry over only 3 days from the 2022 holiday year, the Claimant asserts that it was agreed that he could carry over 10 days (although in cross examination he stated that it was 14 or 15 days). The holiday request form records "C/O 3 2023". I found the Claimant's evidence regarding why this was incorrect to be unclear. There is no documentarevidence before me to show that the Claimant contested the agreed carry over of 3 days at the beginning of 2023. He was asked in cross examination if there was any documentary evidence that he could point to to demonstrate that it had been agreed that he could carry over more than 3 days and he confirmed that he could not point to anything. I prefer the evidence that is recorded in the holiday request form to what is asserted by the Claimant, particularly as I cannot see how it would be possible arithmetically for the Claimant to have accrued between 10 and 15 days to potentially carry forward and also because the Claimant's own evidence on this point was unclear. I therefore find

as a fact that it was agreed that the Claimant could carry forward 3 days from 2022 to 2023.

126. The Claimant's holiday entitlement for the holiday year 2023 was therefore 31 days (28 days plus 3 carried over days).
127. Having considered the evidence before me including the holiday request forms, holiday planner and pay slips, I find that the Claimant took the following holiday between 1/1/2023 and 21/6/2023: 24/2/2023 -1 day; 2/3/2023 – 1 day; 2-3/5/2023 – 2 days; 13-28/5/2023 -12 days; and 16/6/2023 - 0.5 day. Therefore, the Claimant took 16.5 days annual leave during this period.
128. The Respondent also submits that, in addition, the Claimant took 4 days off sick from 14/03/2023, which was paid and agreed to be made up but was not. This is referred to in a document entitled 'Holiday Entitlement Reconciliation' which was produced post employment. The Claimant disputes that it was agreed that he make the time up. There is no other reference to any such agreement in the documentary evidence.
129. In live evidence, the Claimant stated that GB said that as he was sick with Covid he would be paid as everyone else had been. He confirmed that he had not had any other time off sick because of Covid. He stated that he did not agree to make up the time later. This was consistent with GB's live evidence when he stated that, during the Covid pandemic, people who had a week off with covid were paid; the company had tried its best not to punish staff for being ill, despite it being difficult and having cost the company thousands of pounds. In response to a question by me, GB confirmed that when working out what holiday pay was owed, it was decided to treat those 4 sick days as holiday that had been taken. He confirmed that this was not agreed with the Claimant as he was not there.
130. On the evidence before me, I formed the view that the Respondent had initially decided to exercise its discretion to pay the Claimant for the four days that he had off sick because of Covid. I prefer the Claimant's evidence that there was no agreement reached that he would make the time up in respect of this particular period of 4 days sick leave. On the evidence before me, I find that it was only after the termination of employment, when calculating the Claimant's outstanding entitlement, that the Respondent sought to characterise those 4 days as annual leave.
131. From the 22/6/2023 until 31/1/2024 the Claimant was on sick leave. It can be seen from the payslips that have been provided that the Claimant was only paid his SSP entitlement during the remaining weeks of the year. It can be seen that he was not paid any additional sums for any days that the Respondent states were treated as holidays (statutory/bank holidays and compulsory Christmas leave). He was only paid SSP for those days. The Claimant therefore had 14.5 days of accrued but unused holiday entitlement by the end of the 2023 leave year.
132. From 1/1/2024 until 15/1/2024 the Claimant was on sick leave and so unable to use any of his statutory holiday entitlement for that period. The Respondent agrees that his accrued entitlement for that period was 1.5 days. He was only paid SSP during that

period. It can be seen that he was not paid an additional sum for the bank holiday on 1/1/2024.

133. I must also make findings as to whether the Claimant was able or unable to take holiday during his period of sick leave. The Respondent submits that it is unclear from the Claimant's evidence whether he actually took a holiday whilst he was on sick leave. Further, it submits that it is unclear whether the Claimant was 'unable' to take leave given that when GB phoned him on the 31/7/2023 he noted from the ring tone that the Claimant was outside the UK.
134. The Claimant was certified by his GP as unfit for work throughout the period in question as a consequence of mental health conditions. During that time, he had been referred to the Psychological Wellbeing Service, was having Cognitive Behavioural Therapy and seeing a counsellor every two weeks. He has been consistent in stating that he was unwell because of his mental health conditions throughout the period in question. He denies that he went abroad whilst he was off sick. The Respondent asserts that, on one occasion when GB telephoned him, he heard an overseas dialling tone. This is recorded in a message around that time. However, whilst I accept that GB heard a different dialling tone, I do not have any evidence before me regarding the nature of such dialling tones or whether it is possible that such a dialling tone could occur because of a technical glitch, by the re-routing of the call by the network provided or for some other technical reason. In the circumstances, I am not satisfied, on the evidence before me, that the dialling tone that was heard demonstrated that the Claimant travelled abroad whilst he was on sick leave.
135. I therefore find, on the balance of probabilities, that the Claimant was unable to take his annual leave during the time that he was on sick leave.
136. On termination of employment the Claimant was paid 28 hours in lieu of untaken annual leave. This equates to 3.5 days' pay for accrued but unused holiday.

The Relevant Law

Unfair Dismissal (constructive)

137. Employees with more than two years' continuous employment have the right not to be unfairly dismissed, by virtue of section 94 of the Employment Rights Act 1996 ("the ERA").
138. The Claimant claims constructive unfair dismissal within the meaning of s95(1)(c) ERA. The Tribunal has to decide whether there has been a dismissal in accordance with that section which states:

95 Circumstances in which an employee is dismissed

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 his employer's conduct.*

139. In order to show constructive dismissal, the employee must establish that:

- i. there was a fundamental breach of contract on the part of the employer;
- ii. the employer's breach caused the employee to resign;
- iii. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

140. As the Claimant is asserting that he was constructively dismissed the burden of proving this falls upon the Claimant. The standard of proof is the balance of probabilities.

141. The test for whether an employee is entitled to terminate his or her contract of employment is a contractual one. The Tribunal is required to determine whether the employer has acted in a way that amounts to a repudiatory breach of the contract, or has shown an intention not to be bound by an essential term of the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221).

142. The essential terms of any contract of employment include 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).

143. Conduct calculated or likely to destroy mutual trust and confidence may be a single act. Alternatively, there may be a series of acts or omissions culminating in a 'last straw' (*Lewis v Motorworld Garages Ltd* [1986] ICR 157). Individual actions may not in themselves be sufficient but taken together have the cumulative effect of such a breach (*Lewis v Motorworld Garages Ltd* [1986] ICR 157 CA). The incidents relied on as part of the cumulative breach must, however, reach a minimum level of seriousness – an accumulation of incidents that are all entirely trivial and/or objectively reasonable on the employer's part will not suffice.

144. When considering what could amount to 'the last straw', the Court of Appeal in *Omilaju v Waltham Forest London Borough Council* [2005] IRLR 35 held that a 'last straw' does not have to be of the same character as the earlier acts nor need it constitute unreasonable or blameworthy (although it usually will be). However, it must in some way contribute to the breach of the implied obligation of trust and confidence even if what it adds is relatively insignificant. There must have been earlier acts or omissions of sufficient significance that the addition of a last straw takes the employer's overall conduct across the threshold. An entirely innocuous act on the part of the employer cannot however be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his or her trust and confidence in the employer.

145. The Court of Appeal in *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978 set out guidance on the questions an Employment Tribunal would normally ask in order to decide whether an employee has been constructively dismissed. The questions are:

- i. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- ii. Has he or she affirmed the contract since that act?
- iii. If not, was that act (or omission) by itself a repudiatory breach of contract?
- iv. If not, was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term?
- v. Did the employee resign in response, or partly in response, to that breach?

146. In *Lochuack v London Borough of Sutton EAT 0197/14*, Mr Justice Langstaff (the then President of the Employment Appeal Tribunal) stated:

“The issue which needs to be addressed is whether there has been a repudiatory breach... If some of the alleged incidents are found not to have occurred, a tribunal must have regard to those which it has found did occur and ask objectively whether, in the particular context of the case, they amounted to a breach of contract and whether, in the particular context of the case, that breach was so serious as to be repudiatory. It may be that an employee puts up with a breach of contract which is, properly analysed, repudiatory because he would prefer to retain his employment rather than be cast adrift on the labour market. In such a case he might very well spend a period of time without taking any action, or actually take positive steps which would indicate that he wished the contract to continue notwithstanding the breaches which had occurred. But they would remain breaches. A failure to elect to treat a contract as repudiated does not waive such breaches... If a later incident then occurs which adds something to the totality of what has gone before, and in effect resuscitates the past, then the tribunal may assess, having regard to all that has happened in the meantime — both favourable to the employer and unfavourable to him — whether there is or has been a repudiatory breach which the employee is now entitled to accept. If so, and if the employee resigns at least partly for that reason, it will find in that case that there has been a constructive dismissal.”

147. In *Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1, CA*, the Court of Appeal clarified that an employee who claims constructive unfair dismissal based on a continuing cumulative breach is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation of the contract, provided that the later act (the last straw) forms part of the series. The effect of the final act is to revive the employee's right to terminate his or her employment based on the totality of the employer's conduct.

148. The Tribunal may, in some circumstances, be required to use its judgement to decide whether a reason given in a letter of resignation is a genuine reason such as to give rise to a right to claim constructive dismissal [*Ishaq v Royal Mail Group Ltd* 2017 IRLR 208, EAT].
149. It is not necessary for an employee to expressly inform the employer of his or her reasons for resigning in order to show that he or she resigned because of the employer's breach [*Nicholson v Hazel House Nursing Home Ltd* EAT 0241/15]. There must, however, be sufficient evidence from which a Tribunal can infer the reason or reasons for the resignation [*Mruke v Khan* 2018 ICR 1146, CA].
150. It is for the employer to show the reason or principal reason for the dismissal, and that the reason shown is a potentially fair one within section 98 ERA.
151. If that is shown, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA).
152. In applying section 98(4) ERA, the Tribunal must not substitute its own view for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

Implied term of trust and confidence

153. For there to be a breach of the implied term of trust and confidence, the Claimant is required to show that the Respondent conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee, without reasonable and proper cause.
154. The Tribunal must look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that an employee cannot reasonably be expected to put up with it.
155. The particular circumstances of the case are important in determining whether or not there has been a breach of an implied term. Specific context is important when considering whether or not there has been a fundamental breach.
156. A breach will only occur where there is no reasonable and proper cause for the conduct in question. The burden of proving the absence of reasonable and proper cause lies on the party that is asserting that this is the case which will usually be the employee.
157. Even if the employee's trust and confidence in the employer is, in fact, undermined, there may be no breach if, viewed objectively, the employer's conduct was not unreasonable.
158. In terms of assessing whether the employer conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence, the

Tribunal is required to look at the circumstances objectively that is from the perspective of a reasonable person in the Claimant's position. Unreasonable conduct on the part of the employer is not necessarily sufficient. It is a demanding test. As per *Transco plc (formerly British Gas plc) v O'Brien* 2001 IRLR 496, EAT, at paragraph 27) it was held that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". Lord Steyn referred to the purpose of the term 'seriously damage' in *Malik* as "[...] apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."

Statutory entitlement to holiday pay

159. Under regulation 13 of the Working Time Regulations 1998 ("WTR") a worker is entitled to 4 weeks' (20 days) annual leave in each leave year. Under regulations 13A WTR a worker is entitled to a further 1.6 (8 days) weeks' leave each year.

160. Under regulation 13(15) of the WTR [as amended as of 1/1/2024],

"Where, as a result of taking a period of sick leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year provided it is taken by the end of the period of 18 months from the end of the leave year in which the entitlement originally arose."

161. There is no equivalent provision under regulation 13A (unless a relevant agreement provides otherwise or in where the exception relating to statutory family related leave applies). This means that a maximum of 4 weeks (20 days) can be carried forward in reliance on regulation 13(15).

162. Prior to the introduction of regulation 13(15) on 1/1/2024, the position regarding the carrying forward of leave which had not been taken because of long term sickness absence was governed by caselaw. In the case of *Stringer and ors v Revenue and Customs Commissioners; Schultz-Hoff v Deutsche Rentenversicherung Bund* 2009 ICR 932, ECJ, the European Court of Justice determined that a worker should be able to carry over annual leave that they have been unable to take due to sickness absence. The ECJ held that the same reasoning applied where the individual had worked for part of the leave year before taking sick leave.

163. Regulation 14 of the WTR provides that

"(1) Paragraphs (1) to (4) of this regulation apply where—

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3). [...]

(6) Where a worker's employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under paragraph (14), (15) or (17) of regulation 13 or paragraph (7) or (7A) of regulation 13A, the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave."

164. In *Chief Constable of the Police Service of Northern Ireland and anor v Agnew and ors* 2024 ICR 51, SC, the Supreme Court held that there is no requirement as a matter of law that leave derived from different sources must be deemed to have been taken in a particular order. No distinction should be drawn between the minimum 20 day entitlement to annual leave based on EU law, the additional 8 days' leave permitted by domestic law, and any further leave as a consequence of an individual's terms and conditions. It said '*if and in so far as it is not practicable to distinguish between different types of leave*', *then all the leave to which the worker is entitled must form part of a single, composite pot.*"

MY CONCLUSIONS

Constructive unfair dismissal

165. Taking into account my findings of fact, I must first decide whether the Claimant has shown that 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 in respect of each of the alleged breaches that the Claimant relies upon. If I find that the Respondent did act in such a way, I must consider whether it had reasonable and proper cause for doing so. I first deal with each individual alleged breach in turn.
166. When considering each alleged breach, I have also taken into account the whole factual matrix and considered the context and circumstances in the round. Of particular importance in this respect was the Claimant's notable lack of engagement with the Respondent either face to face or by telephone throughout the period of his sickness leave and his failure to provide the Respondent with a signed authority to correspond with third parties or to provide correspondence signed by him personally. It was clear from the Claimant's own evidence that he was not housebound throughout his sickness absence. Whilst his GP did state that it would be helpful if contact from his employer was kept to a minimum, his GP did not state that his employer should not have any contact with him at all. It was entirely reasonable to expect the Claimant to meaningfully engage with the Respondent during what was a very lengthy sickness absence. I find that the Claimant's failure to do so significantly impacted upon, and is material to, a number of the allegations considered below.

Was the Claimant bullied and harassed whilst he was on sick leave, in particular by Gary Bates visiting the Claimant at home and causing other employees and third parties to visit him at home/giving those individuals his home address?

167. I have found that GB did not visit the Claimant's home address in person at any point whilst the Claimant was on sick leave. I have found that GB did not give the Claimant's address to RH or any other employees/third parties at any point nor did he cause or encourage anyone to visit the Claimant at his home address.
168. A letter from the Respondent to the Claimant was hand delivered on 28/07/2023 by Bob Cains, an employee of the Respondent. Bob Cains was involved in processing the Respondent's mail and so would have been privy to employee's addresses in any event. He posted the letter through the Claimant's letterbox. He did not knock on the door. Hand delivering a letter in such a manner does not amount to 'visiting' someone at their home address. I am satisfied that the Respondent decided to arrange for the letter to be hand delivered so that the Claimant would receive it quickly in hard copy. This was a perfectly reasonable approach to take. I find that such an act does not, when viewed objectively, amount to bullying or harassment. The Claimant has therefore not shown that this act was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. It falls well short of meeting the threshold required to establish a repudiatory breach.

Was confidentiality breached by giving out the Claimant's home address to others

169. I have found that GB did not give the Claimant's address to RH or any other employees/third parties at any point.
170. It is the case that Bob Cains would have been aware of the Claimant's home address by hand delivering the letter to the Claimant's address. He was likely in any event to be aware of the Claimant's as he was involved in sorting the Respondent's post. In most businesses, there will be employees who undertake administrative, personnel and payroll duties and because of that are privy to the personal information of other employees. I find that such an act does not, when viewed objectively, be calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. It falls well short of meeting the threshold required to establish a repudiatory breach.

Was the Claimant bullied and harassed whilst he was on sick leave by Gary Bates saying that the Claimant was causing him and his partner stress?

171. The Claimant relies upon comments made by GB in communications as the basis of this alleged breach. What was said was that *"This situation is causing the company considerable damage and both Leanne and I have had many sleepless nights"* and *"I am having a day off today with Leanne who is quite upset by the whole situation, she needs a stress free day"*.
172. What is said in those messages needs to be considered in context. This was that the Claimant had walked out of the workplace and to start with it had been unclear whether or not he had intended to resign. By the point that these messages were sent the

Claimant was not communicating with the GB face to face or over the telephone. The Respondent is a small family business. LB was involved in the business and had been particularly supportive of the Claimant previously. It is clear from the evidence before me that both GB and LB had taken active steps to support the Claimant previously. The messages amounted to nothing more than a statement of how the situation was affecting them. There is nothing about the messages that is bullying in nature or that amounts to harassment. I find that those acts do not, when viewed objectively, amount to bullying or harassment. The Claimant has therefore not shown that this act was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. The acts concerned fall well short of meeting the threshold required to establish a repudiatory breach.

Was the Claimant bullied and harassed whilst he was on sick leave by being accused of being on holiday abroad whilst he was off sick?

173. I have found that GB heard the ring tone concerned but that this did not show that the Claimant was actually outside the UK at the time.
174. GB specifically stated in the message that this was not a criticism but an observation. Later in the same email he wished the Claimant a speedy recovery. I do not consider that making such an observation at a time that the Claimant was on sick leave was unreasonable. There was no sanction threatened or placed upon the Claimant and there was no investigation arising from the observation. Nothing further was said about it during the course of his employment. In context, I do not consider that there was anything about the message that is bullying in nature or that amounts to harassment. I find that such an act does not, when viewed objectively, amount to bullying or harassment. The Claimant has therefore not shown that this act was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. It falls well short of meeting the threshold required to establish a repudiatory breach.

Did the Respondent fail to provide the Claimant with employment related policies and procedures despite the Claimant requesting these?

175. The Respondent did not provide the Claimant with a copy of his contract and employment related policies and procedures. The Respondent requested that the Claimant provide a signed authority prior to the documents being provided or attend at the offices in person to be handed those documents face to face. The Claimant could have complied with the Respondent's request in this respect and either gone to pick up the documents concerned or provided a signed authority. He did not do either. I have accepted as a fact that GB had concerns about who he was communicating with and was very wary of passing on confidential information about the Claimant to a third party, which, as became apparent from the evidence that the Tribunal heard, and, given the allegations that the Claimant has subsequently made in these proceedings about breaches of confidentiality, was understandable.

176. The Respondent therefore did not refuse to provide these documents but rather specified the manner/circumstances in which they could be conveyed to the Claimant. Objectively, this was an acceptable and justifiable response to the situation that the Respondent found itself in, particularly in view of the Claimant's reluctance to have any face to face or telephone contact with the Respondent over a considerable period of time. Taking in to account those factors, and all of the circumstances, in context, I find that such an act did not amount to behaviour calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. The Claimant has therefore not shown that there was any repudiatory breach of contract in this respect.

Did the Respondent breach confidentiality by informing others of the Claimant's personal situation/health condition?

177. I have found that the Claimant has not shown that the Respondent informed anyone of his personal situation or health condition. The Claimant has therefore not shown that Respondent has breached confidentiality in this regard. The Claimant has not shown that there was any breach of the implied term of trust and confidence in this respect. The Claimant has therefore not shown that there was any repudiatory breach of contract on this basis.

Did the Respondent threaten to withhold sick pay and threaten to dismiss the Claimant if he did not adhere to the law?

178. As per my findings of fact, the Respondent paid the Claimant sick pay as required by the relevant legislation throughout his period of sickness absence. The Claimant did not have an entitlement to contractual sick pay over and above statutory sick pay. Any company sick pay was at the discretion of the Respondent.
179. GB did state in a message that if the Claimant had resigned, he could not legally pay him statutory sick pay as he had to abide by the law. He stated this at a point when it was unclear whether or not the Claimant had resigned.
180. GB did write to the Claimant on 28/7/2023 noting that they had not received a further medical certificate and stating that unauthorised absence without good reason was a serious disciplinary offence which could result in disciplinary action being taken in accordance with the company's disciplinary procedure. He stated that the Claimant would not be paid for any unauthorised absence.
181. As per section 151 of the Social Security Contributions and Benefits Act 1992, in order to be entitled to statutory sick pay, an individual is required to be an employee. Consequently, the Respondent was correct to state that it could not pay the Claimant statutory sick pay if he had resigned. In terms of the content of the letter of the 28/7/2023, it contained an appropriate statement warning the Claimant of the potential consequences of any unauthorised absence. I find that it cannot, on any reasonable interpretation, be considered to be a "threat".
182. The Respondent therefore did not 'threaten' to withhold sick pay or 'threaten' to dismiss the Claimant if he did not adhere to the law.

183. The Respondent did state that it could not pay the Claimant statutory sick pay if he was not an employee. This was simply an accurate statement of the law and was not a threat.
184. The Respondent's acts therefore did not amount to a breach of the implied term of trust and confidence. The Claimant has therefore not shown that there was any repudiatory breach of contract on this basis.

Did the Respondent ignore the Claimant's grievances in relation to the way in which the work was managed (that is that it was unmanageable and inefficient)?

185. I have found that GB did not ignore issues and concerns raised by the Claimant prior to the 21/6/2023. I have found that issues raised by the Claimant were addressed in so far as was possible. I have found that the majority of the issues raised by the Claimant relate to the way that the business was run and managed and that how the business run was for the owners of the business, not the Claimant, to decide. I am not satisfied that the Claimant has demonstrated that he had an excessive workload or unreasonable performance targets or expectations placed upon him. Indeed, it was clear from the evidence before me that GB and LB accommodated the Claimant's needs and requests wherever possible, allowed him to leave early if he needed this and took steps to ensure that he had a working environment that he was comfortable with as per his requests.
186. I have found that the Claimant did not raise any form of grievance before the 21/6/2023, rather, he raised what were normal day to day matters that one would expect to arise in such a business. The Claimant did put his concerns in writing after he went on sick leave. However, given the concerns that the Respondent raised about who was authoring the correspondence that was being sent to the Respondent and given the Claimant's failure to meaningfully engage with the Respondent after he went on sick leave, the Respondent did not have an opportunity to address those concerns directly with the Claimant. Had the Claimant spoken to GB, or attended a meeting as requested, that would have given the Respondent the opportunity to discuss those matters with the Claimant and provide any verbal or written response as appropriate. In the particular circumstances of this case, and considered in context, I find that the manner in which the Respondent acted did not amount to behaviour calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. The Claimant has therefore not shown that there was any repudiatory breach of contract in this respect.
187. I accept GB's evidence that as and when issues were raised by the Claimant that they were addressed in so far as was possible in the ways that he has explained. Bearing in mind his very extensive experience in the classic car industry, I also accept GB's evidence that it was not always possible for every one of the Claimant's concerns to be addressed as that is the nature of the industry. I also prefer his evidence in relation to health and safety issues raised by the Claimant given GB's very extensive experience in the industry which is far greater than the Claimant's experience.

188. In terms of the issues that the Claimant raises regarding SB's behaviour, I have found that SB may have said to the Claimant on one occasion that "*working with you is like banging my head against a wall*". I do not, however, accept that such a comment in isolation comes anywhere near to amounting to bullying and harassment. In terms of the claim that SB shouted at the Claimant on 21/6/2023, after also being unable to identify the missing parts required, given how events unfolded on that date, I accept that this may well have happened. However, it is also clear that the Claimant was also very frustrated and on his own account had "*reached boiling point*" on that date. It seems to me very likely that the atmosphere in the run up to the Claimant walking out was fractious and that both the Claimant's and SB's tempers may well have frayed. However, when considered properly in the context of what occurred on that day, I find that SB shouting at the Claimant when he could not identify the parts concerned did not amount to bullying or harassment or, for the avoidance of doubt, that that was the reason why the Claimant walked out of work on that date.
189. I find that the Claimant has not demonstrated that he was bullied and harassed by SB or anyone else within the business. The Claimant has therefore not shown that SB's conduct was such that 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. It did not amount to a repudiatory breach of contract.

Did the Respondent advertise the Claimant's job whilst he was on sick leave?

190. I have found that the post concerned was not advertised in order to directly replace the Claimant or that it was his job that was being advertised. I have found that it was likely that the decision to employ another fitter was made for a combination of reasons including an increased demand for the work the business did but also at the same time ensure that there was sufficient cover given that it was unclear until 29/6/2023 whether or not the Claimant had resigned. It is clear from the evidence before me that once the Respondent had established that the Claimant had not resigned that the Claimant's role remained open and that the Respondent continued to take appropriate steps to establish when the Claimant was well enough to return to work.
191. The Claimant has therefore not shown that there was breach of the implied term of trust and confidence (or any other contractual term) on this basis and so there was no repudiatory breach of contract in this respect.

Did the Respondent fail to pay the Claimant sick pay and holiday pay that was due?

192. As per my findings of fact, the Respondent paid the Claimant sick pay as required by the relevant legislation throughout his period of sickness absence. The Claimant did not have an entitlement to contractual sick pay over and above statutory sick pay. There was therefore no breach of the implied term of trust and confidence in this respect.
193. No issue arose during the course of the Claimant's employment regarding any failure to pay holiday pay. I have found that the Claimant is owed holiday pay. However, the

dispute over holiday pay arose only after Claimant's resignation. Therefore, there can have been no breach of the implied term of trust and confidence in this respect during the Claimant's employment. Further, as the dispute over the amount of holiday pay due arose only after the end of the Claimant's employment it cannot have been the reason for, or part of the reason for, the Claimant's resignation.

Did Gary Bates state that the Claimant was the sort to have mental health issues?

194. In a message sent on or before 1/08/2023 GB said, amongst other things, *"I know you are not well and I have always known that you have the potential to have mental health problems but I can't support you if you just walk out and refuse to even talk to me"*. He did not state that the Claimant was "the sort" to have mental health problems.
195. What is said is clumsily worded. However, it was not said in a way that was critical of the Claimant and has to be considered in context rather than as an isolated statement. It was said in the context of GB indicating that he needed to be able to speak to the Claimant in order that support be provided.
196. In his closing submissions, the Claimant also asserts that what GB has said in his witness statement, at paragraphs 3, 5, 6, 8 and 18, are further derogatory comments which demonstrates GB's opinion of him. Having considered the content of those paragraphs carefully, I do not consider that there is anything about what is said that demonstrates that 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.
197. Having considered all of the evidence before me, and considered what is said in the message in context of the situation generally and what is said elsewhere in the message, I do not consider that this statement was such that 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. There was no repudiatory breach of contract in this respect.

Did the Respondent refuse to discuss issues with the Claimant?

198. As can be seen from my findings of fact, GB made numerous attempts to engage in discussions with the Claimant throughout the Claimant's sickness absence. He repeatedly invited the Claimant to talk to him by telephone or at a meeting. Whilst GB did block the Claimant's number on his own mobile phone, it is clear from the evidence before me that it was not inappropriate for him to do so (see below). Had the Claimant engaged in a meaningful way with GB during his sickness absence then there would have been an opportunity for the Claimant to discuss any issues that he wished with the Respondent.
199. The Respondent therefore did not refuse to discuss issues with the Claimant. On the contrary, it was the Claimant who failed to meaningfully engage with the Respondent during the course of his sickness absence. There was no repudiatory breach of contract in this respect.

Did the Respondent place demands on him to put together cars when the parts were lost or not available within an unreasonable time frame, and with incorrect instructions?

200. GB accepted that the Claimant raised concerns regarding parts on numerous occasions. I therefore accept that there were occasions when the Claimant was asked to put together a car and that it subsequently became apparent that a part was not available for whatever reason. I have, however, accepted GB's evidence that obtaining parts was a recurring issue within the classic car restoration industry which reflects the realities of restoring old vehicles rather than any management failing.
201. The evidence before me does not show that the Claimant was subject to unreasonable time frames or unjustified requests in relation to this work schedule.
202. Therefore, whilst I accept that the Claimant found this frustrating, he has not shown that, when viewed objectively, 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. It did not amount to a repudiatory breach of contract.

Blocking the Claimant's telephone number so that he could not communicate with the Respondent whilst he was on sick leave?

203. GB did block the Claimant's mobile phone number. However, I find that he had a good reason for doing so given his father's ill health and his understandable concerns regarding being contacted late at night. However, blocking the Claimant's access to his mobile telephone number did not prevent the Claimant from communicating with the Respondent whilst he was on sick leave. As I have stated above, GB repeatedly invited the Claimant to talk to him by telephone or by meeting up.
204. I therefore find that whilst GB did block the Claimant's telephone number this did not prevent the Claimant from communicating with the Respondent whilst he was on sick leave. GB urged the Claimant on numerous occasions to speak to him. It was open to the Claimant to take up that offer, but he did not do so.
205. The Claimant has therefore not shown that the Respondent's act, when viewed objectively, was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. It did not amount to a repudiatory breach of contract.

Was there a series of acts or omissions culminating in a 'last straw'?

206. Even though I have found that none of alleged breaches individually amounted to a repudiatory breach of contract, I must go on to consider whether the Respondent's conduct over a period of time constitutes a cumulative breach of contract. I must consider whether the final incident was the 'last straw' that pushed the Claimant to resign.
207. In such circumstances, the question of whether the employer's conduct was so serious as to amount to a breach of contract has to be assessed on the basis of the entire

course of conduct. The incidents relied on as part of the cumulative breach must, however, reach a minimum level of seriousness – an accumulation of incidents that are all entirely trivial and/or objectively reasonable on the employer's part will not suffice.

208. First, I have to identify and consider the most recent act on the part of the Respondent which the Claimant says caused or triggered his resignation.
209. The Claimant stated in live evidence that the reason that he resigned was because he did not want to go to the meeting that he had been invited to. The first letter inviting him to a meeting was sent on the 11/12/2023. The second letter offering a further date was sent on the 19/12/2023. This occurred shortly before the Claimant's resignation. He was off sick and so not attending work. He therefore cannot be said to have affirmed the contract since the act of sending the letter and prior to resigning.
210. The next question that I must ask myself is whether the act of inviting the Claimant to the meeting was in itself a repudiatory breach of contract. I find that it was not. Inviting the Claimant to discuss his long-term sickness absence was entirely appropriate given he had been off work for around 6 months by that point. Such an invitation did not amount to a repudiatory breach of contract. On the contrary, it was good practice for the Respondent to do this and an entirely reasonable approach to take.
211. In his resignation letter of the 12/1/2024, he had referred to multiple reasons for his resignation. These relate to the various alleged breaches of contract that I have dealt with above.
212. Given that the Claimant relied upon numerous acts and omission by the Respondent in his resignation letter, I have gone on to consider whether there was a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the 'Malik' term. I have considered my findings of fact in relation to each of the groups of alleged acts or omissions which the Claimant relies on as amounting to a breach of contract, as set out above. I have already explained why none of the alleged breaches relied upon by the Claimant amounted individually to a repudiatory breach, so I do not repeat that here.
213. In terms of the allegation that the Respondent breached confidentiality and bullied and harassed the Claimant by giving out the Claimant's home address or encouraging third parties to visit him at his home, giving out his personal and health details, that GB visiting him at home and that the Respondent advertised the Claimant's job whilst he was on sick leave, I have found that the Claimant has not shown that such acts occurred.
214. In relation to the allegations that the Claimant was bullied and harassed because GB said that the Claimant was causing him and LB stress, by GB accusing him of being abroad whilst off sick and by GB stating that he had always known that the Claimant had the potential to have mental health problems, I have found that these acts did not meet the threshold required to amount to a repudiatory breach.

215. I have found that the Respondent did not 'threaten' to withhold sick pay. Rather the Respondent, quite properly, informed the Claimant that it needed to ensure that it could only continue to pay sick pay if he was still an employee. This was entirely appropriate and I have found that there was no repudiatory breach in respect of this act.
216. Several of the acts and omissions that the Claimant complains of relate to communications. These are that GB refused to discuss issues with him, blocked his telephone number and ignored his grievances. I have found that GB did not refuse to discuss issues with the Claimant. There were a range of ways in which the Claimant was able to communicate with the Respondent. Indeed, the GB urged the Claimant to engage with him on several occasions, but he declined to do so over a very lengthy period whilst he was on sick leave. I have found that there was no act or omission in respect of these complaints that amounted to repudiatory breach.
217. In terms of communication and engagement regarding the complaints that the Claimant had raised, there were a range of steps that Claimant could have taken. He could have told GB who was writing letters for him rather than remaining silent on the subject. He could have signed and posted correspondence directly to the Respondent. He could have provided a signed authority for a third party to correspond on his behalf. He did none of these things despite requests from the Respondent. This in turn cause the Respondent to be suspicious and concerned about who the communications were coming from. This was entirely understandable given that GB had not spoken to or met with the Claimant subsequent to him walking out on the 21/6/2023. The Respondent was entitled to protect itself from any criticism or complaint that may have arisen if it had inadvertently done or not done something because of communications coming from a third party rather than the Claimant.
218. This in turn led to GB to want to ensure that if he were to provide a copy of the contract of employment and company policies that he was sure that they were being conveyed directly to the Claimant. I have found that the Respondent's approach in this respect did not amount to a repudiatory breach of contract.
219. I have found that the Respondent did not fail to pay the Claimant sick pay in breach of contract. There was no repudiatory breach in that respect. I have found that the Respondent has failed to pay the Claimant for untaken holiday. However, that issue arose after the employment ended and so it cannot have caused the Claimant's resignation.
220. A number of the Claimant's allegations relate to the way in which the business was managed. I have given detailed reasons above as to why the Claimant has failed to show that any of the acts or omissions that he relies upon in this respect amount to a repudiatory breach of contract. The Claimant did not agree with some of the Respondent's methods of working. Whilst I have no doubt that the Claimant was frustrated by the way in which the business operated and was run, he has not shown that he was put under unrealistic time pressures, treated unfairly or given excessive workloads. He has not shown that he was bullied or harassed. On the contrary, considered in the round, the evidence before me shows that the Respondent took a

number of steps to accommodate the Claimant in the workplace as far as was possible. I have found that there was no repudiatory breach of contract in respect of these allegations.

221. Having considered the various individual allegations of breaches of contract, I have stepped back and considered my findings about all of the acts which the Claimant complains about so as to consider whether cumulatively all or some of them amounted to a breach. I have concluded that there was not a cumulative breach of the implied term of trust and confidence which ended with the last act (or any of the earlier acts). Looked at in the round, the Respondent's conduct was not such that it was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
222. For those reasons the Claimant has not satisfied me that he has been dismissed in accordance with section 95(1)(c) of the ERA and for that reason it is not necessary to go on to consider whether or not there was a potentially fair reason for any such alleged dismissal. The Claimant was not constructively dismissed and his employment terminated by resignation. His complaint of constructive unfair dismissal fails.

Holiday Pay

223. Under regulation 14 of the Working Time Regulations 1998, a worker whose employment terminates is entitled to payment in lieu of accrued but untaken annual leave accrued during the current annual leave year. In certain, limited, circumstances, which are specified in the WTR, accrued but unused leave can be carried forward to a subsequent leave year.
224. One of those exceptions at regulation 13(15) of the WTR [as amended as of 1/1/2024] applies in this case. As per my findings of fact above, the Claimant was unable as a result of taking a period of sick leave to take 14.5 days of the annual leave to which he was entitled in the leave year which ran from 1/1/2023 to 31/12/2023.
225. At the date of termination, the Claimant had accrued 16 days of untaken annual leave comprising 14.5 days from the 2023 leave year and 1.5 days from the 2024 leave year. The Respondent paid him for 3.5 days upon termination. The Respondent therefore failed to pay the Claimant for the remaining 12.5 days of accrued but untaken annual leave.
226. The complaint under the WTR therefore succeeds.
227. The complaint of unauthorised deductions from wages, insofar as it relates to unpaid holiday pay, is also well founded.
228. The Claimant is entitled to be paid for a further 12.5 days' annual leave. The amount due will be determined at the remedy hearing if not agreed between the parties beforehand.

Approved by:

Employment Judge Boyes

Date: 27 July 2026

Sent to the parties on:

28 July 2026

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For the Tribunal Office:

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