



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Borojevic

Respondent: Caretree Limited

Heard at: Reading (by video **On: 29, 30 April and 1 May 2026**
Hearing)

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Mr M Borojevic, claimant's ex-husband

For the Respondent: Mr L Betchley, Barrister

REASONS

*[REASONS FOR JUDGMENT SENT TO THE PARTIES ON 10 JUNE 2026
PROVIDED AT THE REQUEST OF THE CLAIMANT.]*

1. In a claim form submitted on 5 February 2025, following early conciliation between 6 November and 18 December 2024, the claimant made a claim of unfair dismissal. She ticked the box for unfair dismissal and also ticked the box indicating she was making another type of claim, then set out obscure claims which were not clearly expressed. Subsequently, it was clarified that the claimant was not making any other claims.
2. In box 9.2, the claimant set out her compensation proposal under the section "What compensation or remedy are you asking for?" This included loss of earnings for 38 days in the sum of £2,876.03. It seems to me that the claim should be read as including a claim for unfair dismissal and also a claim for unpaid wages.
3. The claimant gave evidence in support of her own case. She also relied on the written evidence of Milojko Jakovljevic, Marko Borojevic, and Dion Borojevic. The witnesses were not called because it was made clear that there would be no questions for them from the respondent. It is not surprising, bearing in mind that the only evidence they could give was available from the claimant or was not relevant to the issues I had to decide. The respondent relied on the evidence of Pavlos Savvides and Linzi Prendergast. The respondent's witnesses produced two statements: an initial statement and a supplementary statement. The parties also

provided a bundle of 320 pages of documents. From these sources and the witness evidence, I made my findings of fact as follows.

4. The claimant commenced employment with Care Tree Limited on 30 October 2014, and from 10 October 2019 she was employed as a care coordinator. Her responsibilities included managing staff, overseeing care delivery, verifying mileage claims, and ensuring compliance with care quality standards.
5. On 23 August 2024, the claimant was asked to do a spot check on a colleague suspected of leaving a client early. Carrying out spot checks, announced and unannounced, was part of her duties. Following this spot check, a complaint was made against the claimant. The claimant says that in speaking to her about the complaint, Linzi Prendergast publicly humiliated her in the office in front of a colleague. Linzi Prendergast says she spoke discreetly and simply asked for the claimant's version of events. No action was taken, and after that day's work the claimant went on holiday.
6. The claimant returned on 9 September 2024. On her return she was informed she was being suspended on grounds arising from alleged falsification of mileage claims. She was told the suspension was precautionary and she was to remain on full pay.
7. The claimant was invited to attend an investigation meeting with her line manager, Jenny Ashworth, on 10 September 2024. She was provided with screenshots of the alleged mileage claims under consideration. She complained that one document was provided twice and that pages 15 and 16 of a 19-page set were missing. I am not satisfied that anything turns on that. If she required further information, she could have asked for it.
8. At the investigation meeting, the claimant says she was not given sufficient time to prepare. As a result of the meeting, Jenny Ashworth decided the matter should proceed to a disciplinary hearing.
9. During the investigation meeting, the claimant was asked about claiming mileage from a client to the office, which was not permitted. That mileage should have been claimed as an expense using an expense form. She was also asked about the process of signing off rotas. After the procedure was explained, the claimant said, "*I know that.*" She then explained that she signed everyone's mileage off from the office, which was in breach of the correct procedure, and that she had always done it. She questioned why staff did not get paid from home to the office. She was asked about the number of mileage claims and gave her explanations for each.
10. Following the investigation, the claimant was informed the matter would proceed to a disciplinary hearing. She was again provided screenshots of the mileage claims and informed she could be accompanied by a trade union representative or fellow employee. She was later told she could be accompanied by a family member.

11. The disciplinary hearing was scheduled for 19 September 2024 with Linzi Prendergast and Jenny Ashworth. In fact at the disciplinary hearing, she was faced by Pavlos Savvides and Joanna Calvert, without notice of the change. The claimant was accompanied by Mr Jakovljevic, a friend of 30 years. The meeting was recorded.
12. The claimant began by reading a statement and offered to provide a 2019 email which she said showed that her handling of mileage claims matched instructions she had been given.
13. After her statement, the parties entered into discussion about what they wanted from the process. Pavlos Savvides attempted to discuss possible settlement terms. The claimant said she wanted at least three months' pay; Savvides said only one month, explaining that there was plenty of demand for her skills. He also explained that the modest sums nonetheless presented a problem because of possible HMRC involvement and a potential fine.
14. The meeting concluded with the claimant being given time to consider whether she would reach an agreement or, as Mr Savvides put it, "go through the process," which involved dismissal for misconduct. At the end of the meeting, in response to a question about movement on the one month's pay, Mr Savvides said they had "made that decision before today's meeting." This referred to the possible settlement.
15. There is clear indication of a prejudgment of the claimant's case. Mr Savvides said "trust is broken" before hearing the claimant's explanations. There was some suggestion that he was referring to matters beyond the mileage investigation. He also said the disciplinary and dismissal would not be documented if a compromise was reached. The way this was said suggests the decision to dismiss had already been made, rather than being contingent on findings of misconduct by the claimant.
16. The claimant insisted throughout that she had acted properly and offered the 2019 email in support. A passage from the notes of the meeting states: *"If the company was going to give you notice to leave the company, to terminate your employment, they have to pay you what the contract says. But that is a disciplinary matter. So the company is entitled to dismiss you immediately, and then you can take whatever steps you want to correct that—go to tribunal, go to ACAS, go to normal process—and the company will defend that."*
17. It seems to me that Mr Savvides went into the meeting intending either to dismiss the claimant or to enter into a compromise agreement ending her employment.
18. Following the meeting, there were email exchanges. On 26 September, the claimant received an email from Savvides stating: *"I regret to inform you we cannot increase our offer of settlement, as outlined in our meeting"*

last week. Having extended the deadline for you to reply to the offer, as requested by you, please be informed today is the last day of your employment with Care Tree Limited. Further correspondence detailing the reasons for your dismissal will be addressed to you soon."

19. On 1 October, the claimant was sent a dismissal letter. It set out the allegation and her explanation, including: *"When I asked for your comments you said, Linzi had reported you to the police, which had caused anxiety – that you were not given copies of the handbook or disciplinary process – It was only a small amount of money taken – you were was not given enough time to prepare for the investigation meeting– Others had benefited as she had signed off other care coordinators' mileage forms."* After setting out inquiries he claimed to have made, Mr Savvides stated: *"I consider your actions to be gross misconduct and gross breach of trust, resulting in the company losing faith in your integrity in your role as care coordinator."*
20. The claimant was summarily dismissed and informed of her right to appeal.
21. The dismissal letter contains one glaring omission: the claimant's reference to her belief that she had complied with the procedure she had been told to follow. This was not addressed at all. That omission further supports the suggestion that Mr Savvides went into the process with his mind closed to the possibility that the claimant had not done anything wrong.
22. The claimant appealed. She set out grounds including miscommunication about police involvement, lack of access to the employment handbook and procedure, lack of clarity on mileage approval, change of disciplinary panel, lack of internal communication, psychological and physical stress, evidence not taken into account, and contradictory information.
23. On 6 November 2024, she emailed stating she wished to appeal the dismissal. She also stated she had no intention of returning to work but was pursuing the appeal to clear her name.
24. The appeal hearing took place on 20 November 2024 with Shirley Elliott (Citation Ltd) and Linzi Prendergast. The claimant was accompanied by her husband, Marko Borievic.
25. Following the appeal, Prendergast decided to uphold the appeal, reverse the dismissal, reinstate the claimant, and offer her an alternative position and mediation with Mr Savvides. The claimant did not return to work.
26. Early conciliation began on 6 November 2024 and ended on 18 December 2024. The claim was presented on 5 February 2025.

27. The case was originally listed for hearing on 25–26 September last year. It could not proceed, and a preliminary hearing took place. Employment Judge Reindorf set out the issues, including:
- a. Did the respondent breach the implied term of trust and confidence in the claimant's contract of employment at A-T?
 - b. If so, did the claimant resign by her email of 6 November or any other communication? If so, did the claimant resign because of the breach of the implied term of trust and confidence?
 - c. If so, did the claimant delay or otherwise affirm the contract of employment?
 - d. If not, and the claimant was therefore constructively dismissed, what was the reason for the claimant's dismissal? Was it potentially fair within the meaning of section 98(4)?
 - e. If the claimant was unfairly dismissed to what compensation, is she entitled?
28. The list of issues also included the question whether the claimant's failure to return after her successful appeal amounted to resignation.
29. The claimant submits that the case extends beyond mileage claims and concerns the respondent's treatment of a loyal employee of nearly 10 years. She argues that a series of unreasonable, confusing, and pressuring actions cumulatively destroyed trust and confidence, amounting to constructive unfair dismissal. The claimant contends that the legal test requires the Tribunal to assess whether the employer without reasonable and proper cause, acted in a way likely to seriously damage trust and confidence, considering both individual incidents and the overall course of conduct. The claimant says that the respondent's behaviour meets this threshold.
30. She relies on key events including mention of police involvement, abrupt suspension, failure to notify her of the change in disciplinary panel, contradictory communications about dismissal, and discussions about an "amicable ending" during a live disciplinary process, which she understood as pressure. She highlights failure to consider her long service and clean record, and argues the mileage issues stemmed from failures of training, weaknesses in the system, and management failures. She also says her stress and wellbeing concerns were not meaningfully addressed, despite the employer being in the care sector.
31. The claimant therefore contends that she was constructively dismissed and that it was an unfair dismissal. She asks that she is awarded compensation.
32. The respondent relies on Western Excavating (ECC) Limited v Sharp [1978] QB 761 and Malik v BCCI [1998] AC20 setting out principles of constructive dismissal. It says its witnesses should be preferred to the claimant in so far as evidence is contentious. It argues the claimant knew the mileage rules, had been told about them, and that any issues with

computers or training did not amount to breach of contract. It maintains it had genuine concerns identified while the claimant was on holiday, and that suspension and asking her to leave the premises was normal practice. The respondent accepts mention of police involvement, but says this was conditional on the investigation outcome, and that no referral was made before the disciplinary process concluded, and no referral was made at all.

33. The respondent says that the evidence disclosed to the claimant was reasonable, and that if there was any incomplete material, it could properly have been provided to the claimant at later stages during the process. The respondent says that the investigation by the line manager was appropriate, bearing in mind that it was a small organisation; that the alleged short notice for the meeting was not unlawful; and that the claimant was able to take documents home to consider them before the disciplinary investigation meeting. The disciplinary investigation invitation was reasonable.
34. Although the panel changed without notice, the respondent says there was no prejudice to the claimant, and she did not raise an objection. The respondent denies that there was any predetermined dismissal, saying that discussions about pragmatic solutions were not pressure to resign. It rejects allegations of unprofessional conduct and says that any failures in relation to HMRC rules and knowledge thereof were irrelevant, because the case concerned the application of the company's policies, not HMRC rules, which would have informed the respondent's policies.
35. The respondent accepts that admin errors were made relating to dates, but says these were minor, easily clarified, and do not amount to a breach of trust and confidence. The respondent says that the claimant's length of service and disciplinary record were considered at the appeal stage. The respondent says that overall, none of the matters relied upon by the claimant meet the Malik threshold, and that the constructive dismissal claim fails at the first hurdle. Finally, the respondent says that the outcome letter was a genuine offer of reinstatement or alternative employment, and not a conditional proposal.
36. The law I have to apply is as follows. The general principle is that a successful appeal has the effect of negating the original decision to dismiss. It revives the contract of employment, which continues without interruption. A successful appeal will negate the dismissal and mean that the employee remains in employment with retrospective effect. This automatic effect only applies to the result of a live appeal. It applies to a claimant who exercises their right to appeal and does not withdraw the appeal.
37. Where an employee appeals, although she said she did not want to return, she had not at any point withdrawn her appeal, and the reason for continuing with the appeal was the desire to clear her name. The rule applies. The claimant is reinstated in law, but although there was no wish

to return, the employee, if dissatisfied with the way matters were handled by the respondent, could still resign and claim constructive dismissal.

38. A constructive dismissal is where the employer's actions or conduct amount to a repudiatory breach of the contract of employment. It is an implied term of any contract of employment that an employer shall not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term will amount to repudiation of the contract. The essence of the breach is that it is calculated or likely to destroy or seriously damage the relationship.
39. The test whether there is a breach of the implied term of trust and confidence is objective. The breach must impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have. A relatively minor act may be sufficient to entitle an employee to resign if it is the last straw in a series of incidents.
40. This case turns on whether there was a constructive dismissal. If there was a dismissal, it would then be necessary to consider the Employment Rights Act 1996, sections 94 and 98, to see whether the claimant was unfairly dismissed.
41. The first question is whether the claimant resigned. A resignation is the termination of the contract of employment by an employee. The list of issues refers to the document dated 6 November 2024, at page 21 of the bundle. Parts of the document read as follows. In section 7 the last sentence reads: "I'm committed to clearing my name because this unfair process shouldn't define my future or my career."
42. In section 8 it states, "statement of intent regarding return to work. I want to make it clear that after the treatment I have endured throughout this dismissal process, I have no intention of returning to work with this company. The unprofessional conduct, lack of empathy and procedural failures have caused me and my family significant emotional trauma, and I no longer feel this is a safe or supportive environment for my wellbeing. My decision is not based on my dedication or loyalty—I've been committed to this organisation for a decade—but on the reality that the environment here has become detrimental to my health. I'm here to seek a fair resolution and to clear my name, but returning to work here is not a viable option for me moving forward."
43. In section 9, "final statement of commitment to justice. I'm here today because I believe in fair treatment, and I am determined to prove my case. I have the support of family, friends, colleagues and clients who can attest to my dedication, value and the mistreatment I have endured. I know there are laws in this country that protect employees, and I'm fully prepared to pursue justice through the legal system. This process has shown me that I

cannot allow others to dictate my future in this way, and I am committed to seeing this through until a fair and just resolution is reached."

44. This is the email the claimant relies upon as the potential resignation. It seems to me that the claimant, in making an appeal, is seeking to reinstate the contract of employment which had been ended by the dismissal. There are no clear words showing that the claimant has resigned her employment. I am not satisfied that this document is a resignation.
45. Did the claimant resign by her conduct in not returning to work? I am satisfied that the claimant did not return to work, and therefore she can be taken to have resigned her employment. It is clear she did not intend to return, because the earlier document made that explicit. The earlier document makes clear that the reason for resignation is the treatment she received during the process that led to dismissal.
46. The claimant's witness statement is not aligned with the list of issues. Many allegations listed in section 51 of EJ Reindorf's record of preliminary hearing were not made out in evidence. As Mr Betchley's submissions point out, the claimant has not established the matters listed from paragraph A to T. Matters that occurred, or to the extent they occurred, are not established as objectively showing a breach of trust and confidence.
47. Briefly, the claimant was not humiliated on 23 August, and in any event this was not part of the dismissal process. The suspension on 9 September did not amount to a breach of contract. Being asked to leave is part and parcel of suspension. There is nothing amounting to breach of contract. The fact the claimant was told the matter might be reported to the police, bearing in mind safeguarding rules for vulnerable adults, is a benign statement. There was no breach of contract in being asked to attend a disciplinary investigation meeting on 10 September. There is no breach in the invitation to the disciplinary hearing on 19 September, or in the fact that instead of Linzi Prendergast and Jenny Ashworth, the claimant faced Mr Savvides and Ms Calvert. There is a good explanation from the respondent as to why those two conducted the disciplinary hearing: they did not know any participants, and it left Linzi Prendergast available for appeal.
48. There is no breach of contract in the manner in which the preliminary hearing was conducted by Mr Savvides. Complaints about his conduct are unsubstantiated. Listening to the recording of the disciplinary, the claimant's description of the conduct of the disciplinary hearing is not made out.
49. It is not correct that there was a failure to consider the claimant's one piece of evidence, an email from 2019. The claimant could have complained that there was a failure to consider whether her explanation of mileage calculations was properly investigated. The disciplinary hearing did not really consider whether the claimant was at fault. The decision to

dismiss was unjustified, and the claimant could have rightly claimed unfair dismissal had matter remained there.

50. But matters did not stop there. The claimant was taken to the appeal hearing, and the appeal decided she was to be reinstated. There is nothing in the claimant's complaint about contradictory information about who she could contact within the company. It is not clear this caused any difficulty.
51. The appeal hearing took place on 20 November 2024 with Shirley Elliott (Citation Ltd) and Linzi Prendergast. Following the appeal, the claimant was informed that Linzi Prendergast had upheld the appeal, reversed the dismissal, and reinstated the claimant. There was also an offer of another position she had expressed interest in, and the offer of mediation with Mr Savvides. The claimant was given a time-limited option to accept.
52. I conclude that the last sentence in the appeal outcome letter must be construed in light of the fact that everyone knew the claimant did not intend to return. The claimant was told the offer would remain open until 12 noon on Friday 20 December: *"If you decide that you cannot accept this reinstatement, your dismissal will stand."* This is not a conditional reinstatement; it is simply a deadline for the claimant to make up her mind. The decision to reinstate was final; the claimant was required to return to confirm that she would return to work by 20 December when she did not do so that in my view brings the employment to an end. The claimant was not dismissed by the respondent on 20 December.
53. I asked myself whether the claim form can be construed as containing a claim for unlawful deduction from wages. I am satisfied it can, because the claimant says she is claiming loss of earnings. It appears to me the claimant was an employee until 20 December 2024, 12 noon, because that was the deadline given.
54. The claimant did not make an explicit claim for unpaid wages in section 8 of the claimant, but in section 9.2 of the claimant she makes a clear claim for 38 days of lost earnings between the original dismissal and gaining new employment. On the facts, the claimant is entitled to unpaid wages between 26 September and 4 December. After the 4 December the claimant was no longer available for work. She is entitled pay up to that date because the appeal reinstates her automatically and she has until 20 December to return to work, in that period the claimant is in my view to be treated as though suspended from work and therefore entitled to her pay.
55. The number of days between 26 September and 4 December is 68. The claimant claims 38 days. I am satisfied she is entitled to recover £2,876.03, the sum represents 38 days' pay.
56. For the period after dismissal when she was not available for work, she would not have been entitled to recover wages.

57. My decision is that the claimant was not unfairly dismissed; that claim is dismissed. The respondent failed to pay wages between 26 September and 4 December, and the claimant is entitled to recover £2,876.03. The balance is lost due to mitigation by finding work elsewhere.

Approved by:
Employment Judge Gumbiti-Zimuto

Date: 1 August 2026

Sent to the parties on: 12 August 2026

For the Tribunals Office

Notes

All judgments (apart from judgments under Rule 51) and any full written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/