



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000630/2026

Held in Dundee on 6 July 2026

Employment Judge Sutherland

Mrs S Anfield

**Claimant
In Person**

BH Alderwood Limited

**Respondent
Represented by:
Ms E Wood -
HR Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

- a. the complaint of constructive unfair dismissal does not succeed and is accordingly dismissed;
- b. The complaint of unlawful deduction from wages does not succeed and is accordingly dismissed.

REASONS

Introduction

1. The claimant made complaints of deduction from wages and constructive dismissal which were denied by the respondent.
2. The claimant gave evidence on her own behalf. The respondent called Kenny MacDonald (Leisure Club Manager) and Colin Richmond (General Manager).
3. Both parties lodged bundles of documents. Neither party made closing submissions.
4. The following initials are used by way of abbreviation in this judgment –

Initials	Name	Job Title
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CR	Colin Richmond	General Manager
KM	Kenny MacDonald	Leisure Club Manager
SA	Sharon Anfield	Spa Manager (Claimant)
NN	Nik Nenov	Deputy General Manager

5. The issues to be determined were as follows:

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

6. Was there a repudiatory breach of the claimant's contract namely a breach of the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties?
7. The acts relied upon in asserting repudiatory breach were that –
 - a. NN, DGM physically intimidated her on 8 August, verbally abused her on 31 October, and overtly threatened her on 10 November;
 - b. There was a lack of duty of care regarding her working hours;
 - c. Despite making verbal complaints throughout August and September regarding bullying and overwork, CR, GM failed to investigate;
 - d. The last straw occurred between 15 and 28 December where operational demands forced her to work 10 consecutive days.
8. If so, was the breach a factor in the claimant's resignation?
9. If so, did the claimant affirm the breach?
10. If not, did the respondent have a potentially fair reason for dismissal (Section 98)?
11. To what basic award is the claimant entitled? Did the claimant engage in conduct which would justify a reduction to the basic award?
12. What compensatory award would be just and equitable in all the circumstances? What loss has the claimant suffered in consequence of the dismissal? Did the claimant contribute to her dismissal? Has the claimant taken reasonable steps to mitigate her losses?

Unlawful deduction from wages - Section 13 Employment Rights Act 1996

13. Was the total amount of wages paid to the claimant on an occasion less than the amount properly payable?

14. If so, was the complaint presented within 3 months of due date for payment or, if that was not reasonably practicable, was it presented within a reasonable period thereafter?

Findings in fact

15. The Tribunal makes the following findings in fact:
16. The respondent is a management company which employees around 120 staff who work in the Carnoustie Golf Hotel & Spa. It forms part of a group of companies and is supported by a centralized HR function which is based in England.
17. The claimant ('SA') was employed by the respondent from 18 May 2018 to 29 December 2025. She worked in the Spa and was promoted to Assistant Spa Manager in March 2025 and to Spa Manager in June 2025. On promotion to manager her pay changed from hourly to salaried. SA has previously run her own spa business and did so until she moved to full time hours with the respondent in early 2025.
18. SA's contract of employment provided that she was normally expected to work 40 hours over 5 days across the week including Monday to Sunday and that she was expected to work such hours as are reasonably necessary to fully carry out her responsibilities without any additional payment. She was paid a salary of £30,000 a year (£2,500 gross; £2014 net a month). She was paid in arrears on or about the 10th of the following month.
19. SA worked the following additional hours on average: 5 1/2 hours a week in April/ May; none in May/ June or June/ July; 2 hours a week in July/ August; 3 hours a week in August/ September; and 1 hour a week in September/ October. Thereafter in October, November and December she did not exceed an average of 40 hours a week.
20. Until June 2025 SA reported to KM, Leisure Club Manager. From June 2025 SA reported to NN who had recently been appointed Assistant General Manager. NN reported to CR, General Manager.
21. Although there had been a change in reporting lines, SA regularly discussed spa business with KM. On 7 August NN, DGM instructed SA not to speak to KM about the spa which had nothing to do with him.
22. On 8 August SA had a meeting with the Elemis rep in the restaurant and NN, DGM walked into the restaurant and gestured an instruction to end the meeting by drawing his finger across his throat. The claimant was very upset by this. She went to see KM and they reported the incident to CR, GM. She said it amounted to bullying. SA asked if there was anyone from HR in the building and GM said no. GM talked her through the options in the staff

handbook: the first was to try resolve matters informally; the second was to deal with matters formally through mediation or investigation; in order to deal with matters formally she would need to put in a formal written complaint. He encouraged her to try to resolve matters informally.

23. CR then spoke with NN who explained there was no malice – he was asking her to cut the meeting. SA also spoke with NN, explained his gesture had upset her and she told him never to do that again. NN apologised and said that it was not his intention. CR, GM subsequently contacted SA to check whether the situation with NN had resolved and she confirmed it had.
24. Around that time, NN, DGM praised her about the way she handled an incident involved a client who appeared to be having a heart attack.
25. In October the respondent hired a Spa Assistant Manager to help SA manage the spa.
26. Around late October the claimant said she was handing in her notice. She had sought advice from ACAS about constructive dismissal. She ultimately elected not to resign.
27. In late October, SA became physically unwell and she was off sick. NN, DGM called her to ask how she was feeling. SA came back to work early because someone else was off sick. On 31 October NN said you look really poorly and “now you fuck off home”. After meeting with NN and another to discuss a staff member, SA went home.
28. In early November there were a number of staffing issues. The claimant herself had periods of sick absence. On 10 November, whilst discussing those issues, SA said to NN, I think you want rid of me. NN stated to SA “if I wanted rid of you, you would know about it”.
29. SA was on holiday from 7 to 13 December.
30. SA, as Spa Manager, was responsible for the spa staff rota. There are between 5 and 10 spa therapists. SA had been rostered to work 14 to 24 December with the weekend off (8 days) but because of last minute staff shortages she elected to work from 14 to 24 December (10 days). No-one was aware that she was working 10 days continuously and she did not raise this as an issue.
31. On 28 December SA met with CR, GM to discuss an issue with staff cover on 1 and 2 January. He asked whether she could cover the shifts and she said no, she was babysitting her grandchildren. He said fine, that was ok.
32. The claimant resigned in writing on 29 December with immediate effect.

33. SA did not apply for alternative employment in the period from 29 December to early March because she wanted to be available to look after her grandchildren.
34. SA applied for and was offered alternative employment in early March 2026 but declined it on account of her health. She saw her GP and was certified as unfit for work. She remains in receipt of Employment Support Allowance.
35. SA participated in ACAS Early Conciliations from 6 January to 27 February 2026. She lodged her tribunal claim on 17 March 2026.

Observations on the evidence

36. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
37. The claimant's evidence was at times inconsistent and, although that is understandable given the passage of time, it somewhat undermined the reliability, and on occasions, the credibility of her evidence.
38. The respondent operates a time and attendance system such that staff are required to clock in and clock out. The respondent stated in its ET3 Response that they had checked their attendance system and the claimant did not work over and above her contracted hours (other than a very short period in November). The respondent did not however produce any evidence to this effect (e.g. there was no print out of that system). The claimant lodged copies of her hours worked which GM confirmed were from their attendance system. It was therefore considered likely that the claimant had worked those additional hours.
39. The claimant stated in evidence that after she worked excess hours there was no opportunity to take time off in lieu. The claimant took holidays in November and it was unclear why she did not take time off in lieu instead. The claimant did not raise an issue with working additional hours without pay from April to October.
40. Notwithstanding the change in reporting line from KM to NN, the claimant (SA) continued to discuss spa related matters with KM ("my go-to was always Kenny"). NN was unhappy about this. The claimant had a close relationship with KM (she had wanted to call him as a witness and she treated him as a favourable witness in cross-examination). They discussed NN's management style and KM expressed his disapproval. KM encouraged the claimant to

make a formal complaint about him but in September the claimant said she wanted to drop it.

41. The claimant stated in evidence that on 8 August she had a meeting with the Elemis rep in the restaurant and that NN had walked into the restaurant and made the gesture of drawing his finger across his throat. The claimant stated that she was very upset and this was confirmed by KM. The claimant described this incident in her further particulars as physical intimidation. However she knew that NN wanted to be at that meeting. CR spoke with NN who explained there was no malice – he was asking her to cut the meeting. In the circumstances it was considered likely that the gesture was an instruction across the restaurant to end the meeting and it was not a threat of violence or harm. Whilst the gesture was not wholly appropriate, the claimant's assertion NN, DGM physically intimidated her on 8 August was not accepted.
42. In late October, SA became physically unwell and she was off sick. NN, DGM called her to ask how she was feeling. SA came back to work early because someone else was off sick. It was apparent to colleagues that she was still unwell. On 31 October NN said you look really poorly and "now you fuck off home". After meeting with NN and another to discuss a staff member SA went home. She described this incident in her further particulars as verbal abuse despite being visibly unwell. It can reasonably be inferred that NN was sending her home because he was concerned she was not fit to be at work and this would have been apparent to SA. Whilst the swearing was not wholly appropriate, the claimant's assertion that NN, DGM verbally abused her on 31 October is not accepted.
43. In early November there were a number of staffing issues. The claimant herself had periods of sick absence. On 10 November, whilst discussing those issues, SA said to NN, I think you want rid of me. NN stated to SA "if I wanted rid of you, you would know about it". She described this incident in her further particulars as an overt threat. It can reasonably be inferred that the comment was not an overt threat but was instead gruff reassurance.
44. The claimant stated in evidence that NN's treatment caused her to have panic attacks at work. The claimant regularly attended her GP but did not raise any issue with her mental health until March 2026. She did not advise of any clinical diagnosis of a panic disorder. In the circumstances, it was considered likely that the claimant was at times incredibly upset at work but was not necessarily having panic attacks.
45. The claimant stated in evidence that in a meeting with CR, GM she asked him if there was any HR and he said no. The claimant was inconsistent about when that statement was made: in her further particular she stated that he

had said this in the meeting to discuss the throat gesture (August); in evidence she stated that happened after she complained to him about NN saying “fuck off home” (October). GM stated in evidence the claimant asked whether there was HR in the building and he had said no. KM stated in evidence that the claimant asked whether she could contact HR and CR said no, which was inconsistent with both the claimant and GM. Further the statement on her payslips explains how to contact the HR department. In the circumstances it is considered likely that at the meeting in August the claimant asked if there was anyone from HR in the building and GM said no.

46. It was considered likely that the claimant was aware that the respondent had an Employee Handbook which contained a disciplinary and grievance procedure because it was referred to in her contract of employment and it was referred to by CR, GM in their meeting about the August incident.
47. The claimant stated in evidence that CR, GM had dismissively stated she was just being emotional in a meeting in October when discussing NN. CR, GM stated in evidence that he had not and this was not a phrase he would use. CR, GM had experience in managing allegations of bullying and harassment and was familiar with the relevant policy. It was apparent that he had not been dismissive of her concerns regarding NN and had checked in with her. He was entirely measured in his testimony and in the circumstances it was not considered likely that he dismissively stated that she was just being emotional.
48. When the claimant resigned in writing on 29 December with immediate effect she did not give any reason for her resignation. When discussing the reason for her resignation with KM she cited her hours of work and she did not mention NN. KM said she had been too hasty and he encouraged her to discuss matters with CR, GM. When GM phoned her to persuade her to change her mind she again cited her working pattern and she did not mention NN. The claimant stated in evidence that “I did 10 days solid and couldn’t take it anymore”; she was working excess hours and it was impossible to take back in lieu because there was no staff to cover; “I was in charge of the rota but I wasn’t in charge of staff phoning in sick”. After she resigned she did not look for alternative work because she wanted to be available to look after her grandchildren. When the claimant resigned, 7 weeks had elapsed since the incident with NN on 10 November. In all the circumstances it was considered likely that the reason for her resignation was her hours of work and the incidents involving NN were not a factor in her resignation.
49. The claimant initially stated in evidence that she did not apply for alternative employment in the period from 29 December to late January because she wanted to look after her grandchildren. She subsequently stated in evidence that this was because she was not fit to work on account of her mental health.

This was not accepted as credible. The claimant regularly saw her GP regularly on account of her asthma and COPD but she did not raise any issues with her mental health until March 2026. The claimant stated in evidence that she then applied for and was offered work which she declined because of her health. Her GP certified her as unfit to work from March 2026.

The law

Constructive dismissal

50. 'Dismissal' is defined in s95(1)(c) Employment Rights Act 1996 to include 'constructive dismissal', which occurs where an employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct (s. 95(1)(c)).
51. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (***Western Excavating (ECC) Ltd v Sharp*** [1978] ICR 221).
52. There must be a breach of contract by the employer which is "a significant breach going to the root of the contract" (***Western Excavating***). This may be a breach of an express or implied term. The essential terms of a contract would ordinarily include express terms regarding pay, duties and hours and the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (***Malik v Bank of Credit and Commerce International Ltd*** [1998] AC 20).
53. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively, there may be a continuing course of conduct (a series of acts or omissions) extending over a period and culminating in a "last straw" which considered together amount to a repudiatory breach. The "last straw" need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable, blameworthy or of the same character (***London Borough of Waltham Forest v Omilaju*** [2005] IRLR 35). An employee is entitled to rely on the totality of the employer's acts notwithstanding affirmation prior to the last straw (***Kaur v Leeds Teaching Hospitals NHS Trust*** [2018] EWCA Civ 978).
54. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: "The test does not require

a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..." (**Leeds Dental Team Ltd v Rose** [2014] IRLR 8, EAT).

55. The breach must be a factor (i.e. have played a part) in the claimant's resignation. The claimant must not have affirmed the breach by any delay in resigning. It is open to the employer to establish that the reason for conduct amounting to a breach was potentially fair and if so to consider whether the employer acted reasonably in all the circumstances.
56. The questions to be answered are as follows (**Kaur**):
 - 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 nevertheless a 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?"*

Unlawful deduction from wages

57. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker so employed unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.
58. Under Section 13(3) ERA 1996 there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
59. Under Section 23 a complaint for unlawful deduction from wages must be made within 3 months of the date of the payment of wages from which the deduction was made or, if it was not reasonably practicable to do so, within

such further reasonable period. Where there is a series of deductions the time limit applies to the last deduction in the series. Nevertheless, a complaint must relate to a deduction made within the period of 2 years ending with the date of the complaint.

Discussion and decision

Constructive dismissal

60. The claimant asserts that the most recent act (or omission) which triggered her resignation ('the last straw') was the requirement to work 10 days consecutively without a day off.
61. The claimant ceased working the 10 days on 24 December and she resigned on 29 December. She has not therefore affirmed the contract since that act.
62. Working 10 days consecutively was not in breach of the Working Time Regulations or her the express terms of her contract. The claimant asserts that she worked 10 days in response to operational demands. The operational demands arose because of last minute staffing shortages which were beyond the respondent's control. The claimant did not work 10 days because of an act or omission on the part of the employer. The claimant elected to do so response to operational demands. The respondent was not aware that she was working 10 days continuously and she did not raise it with anyone. Working 10 days in response to operational demands did not by itself constitute a breach of the implied term of trust and confidence.
63. The claimant did not work 10 days consecutively because an act (or omission) on the part of the respondent. Whilst the last act does not require to be unreasonable or blameworthy it must nevertheless be an act. There was no course of conduct comprising several acts or omissions ending on 24 December.
64. To the extent that the claimant is relying upon the requirement to work excess hours she ceased to work additional hours to any material extent in September 2025.
65. The claimant asserts that she was bullied by NN, DGM and identified three specific incidents. Contrary to the claimant's assertion these incidents did not amount to physical intimidation, verbal abuse or an overt threat. Whilst NN's management style was not wholly appropriate (the gesture, the swearing, the gruff manner) it fell short of conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence.
66. The claimant asserted that despite making verbal complaints throughout August and September regarding bullying and overwork, CR, GM failed to investigate. He advised her of the options in the staff handbook. The claimant

was aware that there was a grievance procedure in the staff handbook but she did not make a written complaint to either to CR, GM or to HR. She confirmed to CR, GM that she wished to resolve matters informally. There was in the circumstances was no failure to investigate on the part of CR, GM.

67. The last incident involving NN she relied upon occurred on 10 November. The claimant was on holiday from 7 to 13 December. Although the claimant delayed in resigning it cannot reasonably be inferred that she has affirmed the contract since that act. However the claimant did not resign either wholly or partly in response to the incidents of alleged bullying on the part of NN, DGM or any failure to investigate by CR, GM. She resigned wholly because of her hours of work (she wanted to be available to look after her grandchildren).
68. The claimant did not resign in response to a repudiatory breach of contract and her complaint of constructive unfair dismissal does not succeed and is therefore dismissed.

Unlawful deduction from wages

69. Under the express terms of her contract the claimant was paid a salary (a fixed amount monthly in arrears) and whilst she was normally expected to work 40 hours a week, she was expected to work such hours as were reasonably necessary to fully carry out her responsibilities without any additional payment. The claimant worked additional hours (more than 40 hours) in some weeks arising in the period April to September 2025. She did not receive or seek payment in respect of those additional hours during her contract.
70. The claimant did not have a contractual entitlement to payment in respect of those additional hours. The total amount of wages paid to the claimant on any occasion was not less than the amount properly payable.
71. There was accordingly no unlawful deduction from wages and this complaint is accordingly dismissed.