



EMPLOYMENT TRIBUNALS

Claimant: Mr J Cooper

Respondent: Covers 33 Limited

Heard at: Leeds (By Video) **On:** 9th & 10th June 2026

Before: Employment Judge S Edwards

Representation

Claimant: In Person

Respondent: Ms. R Thompson (Respondent Director's Daughter)

JUDGMENT was sent to the parties on 10th June 2026, written summary reasons were sent to the parties on 17th July 2026 and full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

FULL REASONS

Introduction and Issues

1. The claimant, Mr. Cooper, made a complaint of constructive unfair dismissal against the respondent, Covers 33 Limited. The issues to be determined at the hearing were outlined and agreed at the start of the hearing and are set out as headings in the conclusion below, insofar as they are relevant to the decision.

Evidence

2. I had the benefit of a joint bundle of documents and witness statements of 202 pages. In that bundle was a witness statement from the claimant and witness statements from Bartholomew Thompson ('Mr. Thompson'), Juliet Thompson, Janine Birch, Jordan Buckley, Craig Lord and Andy Thompson on behalf of the respondent.
3. Upon clarification of the issues at the outset of the hearing, the claimant confirmed that his allegation that he faced defamation and toxicity in the workplace was an allegation against Mr. Thompson and not any other employee of the respondent. It was therefore agreed that the evidence of Mr. Lord and Mr. Buckley was not relevant to the issues to be determined and they did not give oral evidence at the hearing.

4. Mr. Andy Thompson did not attend to give oral evidence at the hearing. I explained to the respondent that the evidence of Mr. Andy Thompson, particularly on matters that are disputed, would carry less weight than that of witnesses who were present to give oral evidence at the hearing, which was understood by the respondent.
5. I heard oral evidence from the claimant, Mr. Thompson, Mrs. Thompson and Mrs. Birch. In making my factual findings and reaching my conclusions, where there was a factual dispute between the evidence of the claimant and the respondent's witnesses, I preferred the evidence of the respondent. The claimant is a litigant in person and due regard was given to that fact in reaching my decisions on the evidence. The respondent was also a litigant in person but had the assistance of Ms. R Thompson who is a solicitor, although with no experience of employment law and she was acting in her personal capacity.
6. The evidence given by the claimant was general and somewhat vague and lacked detail. His grievance and witness statement did not set out any specific account of events relied upon. The claimant raised new matters and provided new explanations in response to cross examination and the tribunal's questions, which had not previously been set out in his claim form, witness statement or grievance and were not supported by documentary and contemporaneous evidence. Whilst the claimant did make appropriate concessions on matters that were supported by documentary evidence, he provided responses that I did not find credible or plausible on matters where there was no documentary evidence to support assertions.
7. By contrast, a significant proportion of the respondent's evidence was supported by documentary evidence. The witness statements were detailed, clear and cross-referenced relevant documents. The oral evidence given by the witnesses was consistent with their witness statements and the contemporaneous evidence.

Findings of Fact

8. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the tribunal must consider in order to decide if the claim succeeds or fails. If I have not mentioned a particular point, it is not because I have overlooked it, it is simply because it is not relevant to the issues. The following findings of fact are found on the balance of probabilities.
9. The respondent is a limited company that sells vinyl record sleeves, accessories and cases for CDs, DVDs and vinyl records. Sales were most commonly made by mail order. The company is a small company and during the period in which the claimant was employed, it employed 5 people including the claimant and Mr. Barry Thompson, a Director. The respondent has no HR department or HR Manager. The respondent has no grievance policy and Mr. Thompson was not aware of the existence or contents of the ACAS Code of Practice on Disciplinary and Grievance procedures. He had never received a formal grievance from an employee in the past or had cause to address any grievances.

10. The employees of the respondent are a close and tight knit group, and any matters of concern were habitually discussed and resolved informally and verbally. Employees did not communicate with each other by email or letter and most communication was verbal or by WhatsApp messages.
11. The claimant was employed by the respondent as a Development Manager from 1st June 2014. The claimant's salary at the date of termination was £40,000 per annum before deductions for tax, national insurance and pension. The claimant was also a 15% shareholder in the respondent company. The claimant's role involved building relationships with customers, taking orders, attending record fairs and markets to sell stock, dealing with and building relationships with suppliers and conducting business communications. The claimant was also responsible for the respondent's IT systems and website.
12. Prior to the summer of 2024, the claimant had been largely left to get on with his role with minimal supervision. Mr. Thompson saw the claimant as his successor in the business as he began to consider stepping back from the day-to-day activities of the business.
13. From the summer of 2024 Mr. Thompson noticed a change in the claimant's attitude and behaviour. He had become aware that the claimant was living rent and bill free, and without his permission, in a flat above the Silk Mill pub, which was owned by Mr. Thompson and to which the claimant had the keys. Mr. Thompson noticed that the claimant was frequently late arriving at work and would leave early. Mr. Thompson developed concerns that meetings the claimant said he was attending with the respondent's website provider, Bamboo, were not actually taking place. This concern was raised with Mr. Thompson by Mrs. Birch when she had attempted to contact the claimant during a meeting he was scheduled to attend with Bamboo and was informed by them that they had not seen the claimant for over 12 months.
14. On or around 20th December 2024 the claimant was asked to attend a meeting with Mr. Thompson on 23rd December. The claimant agreed. At 9.05am the claimant asked if they could meet at 10.30am, which they did. The meeting took place on the last day before the business closed for Christmas and after the other members of staff had left.
15. At the meeting, Mr. Thompson informed the claimant that he had concerns with the claimant's conduct, performance and him living in the Silk Mill pub rent free. The conduct and performance concerns raised with the claimant were his timekeeping in relation to the amount of time he spent outside the building on his phone, arriving late and leaving work early and his attendance at meetings with Bamboo. The claimant was told that his performance and attitude had to improve. Mr. Thompson informed the claimant that he needed to vacate the flat at the Silk Mill pub. The claimant and the respondent did not discuss concerns regarding customer payments in this meeting.
16. The claimant became angry in the meeting, he stood up and jabbed his finger towards Mr. Thompson's forehead and said "you had better be sure of your facts" and stated that he would buy Mr. Thompson out of the business.

17. Mr. Thompson did not say to the claimant that he should leave the business and did not dismiss the claimant in the meeting. It was clear to the claimant when he left that meeting that he was still employed by the respondent. The claimant stated in oral evidence that there was an “attempt” to dismiss him, which was a less stringent allegation than that contained in his grievance and the claim before this tribunal. He also accepted that at the end of the meeting he was told that Mr. Thompson was much happier. The claimant did not challenge Mr. Thompson’s recollection of the meeting on 23rd December 2024 in cross examination except in respect of discussions regarding customer payments.
18. I do not accept the claimant’s evidence that he believed he had been dismissed on 23rd December. The claimant had positive and friendly WhatsApp interactions with Mrs. Birch during the Christmas period and did not mention that he had been dismissed. The claimant did not mention that he had been dismissed when he returned to work on 2nd January. I do not find it plausible that, if he had been dismissed on 23rd December, he would not have mentioned that to Mrs. Birch when they were communicating over the Christmas period, check the arrangements for his return to work on 2nd January or discuss what happened when he returned to work. The claimant had known and worked with his colleagues for over 10 years, and they were a close knit team. The claimant was paid his normal full salary on 27th December.
19. The claimant returned to work after the Christmas break on 2nd January 2025 and continued working as normal. The respondent did not instigate any formal investigation or disciplinary process against the claimant. Mr. Thompson considered that the matters raised had been dealt with in the discussion on 23rd December. Communication remained friendly and nothing had changed in relations between the claimant and Mr. Thompson or the claimant and his colleagues.
20. The claimant commenced a period of sickness absence due to an injury to his thumb, which he sustained playing Rugby, on 10th February 2025. He continued to assist with operational matters when he was asked to do so by his colleagues and Mr. Thompson during his leave. In mid-February the claimant was again informed by Mr. Thompson that he needed to vacate the flat at the Silk Mill pub and was given until 2nd March 2025 to do so.
21. The claimant vacated the Silk Mill pub flat on 2nd March in accordance with Mr. Thompson’s request. He sent a message to Mr. Thompson informing him that the flat was vacant and asked if they could meet the following morning. They did meet on 3rd March 2025 at the Silk Mill pub. The keys to the flat were returned to Mr. Thompson.
22. Mr. Cooper informed Mr. Thompson that he wanted to buy Mr. Thompson out of his ownership of the respondent company. Mr. Thompson asked, “do you have the funds to do that”. Mr. Cooper replied, “things don’t work like that.” Mr. Thompson said, “no chance then”. The claimant became angry and threw his fit note at Mr. Thompson and said, “let’s see if you can manage without me”.

23. Mr. Thompson did not dismiss the claimant in the meeting on 3rd March 2025. Mr. Thompson did not tell the claimant that he “should just go” and he did not say anything that could have been interpreted by the claimant as a dismissal by the respondent. The contemporaneous evidence indicates that the claimant knew at the end of the meeting that he had not been dismissed. This is demonstrated by his provision of the fit note, which would not have been required if his employment had ended. There was no discussion in the meeting on 3rd March about the claimant’s performance or conduct and concerns about those matters were not raised with the claimant in the meeting.
24. The claimant raised a grievance by email to Mr. Thompson on 4th March 2025. The grievance alleged:
- a. That he had been dismissed without pay on 23rd December 2024 after he was defamed due to baseless claims being circulated in work and in public;
 - b. That the dismissal was rescinded but he continued to face defamation and toxicity in the workplace;
 - c. That he had made Mr. Thompson aware of toxicity in the workplace from another staff member which was not addressed;
 - d. That he was dismissed on 3rd March 2025 without a reason whilst on sick leave and without pay or notice and it was causing him immense stress and financial hardship.
25. The claimant asked for six months’ pay to alleviate his financial difficulties and said, “if you still wish to dismiss me from my role...please confirm in writing that I will be paid for the said period in monthly instalments.”
26. It also said, “However, if not, please inform me of a suitable time for us to meet and discuss this grievance once I am approved fit for work”.
27. Mr. Thompson believed the grievance was raised to seek to negotiate an exit from the business with six months’ pay, which he did not agree to. Mr. Thompson’s understanding of the situation was that if he did not want to dismiss the claimant and negotiate an exit, he would need to arrange a grievance meeting when the claimant was fit to return to work.
28. The grievance did not contain any information about the events or incidents that the claimant claimed caused a toxic environment, the claimant did not say who had defamed him or by whom the toxicity he alleged was instigated. There was no detail in the grievance that would have allowed Mr. Thompson to begin an investigation into events ahead of any grievance meeting. The complaint regarding dismissal was a matter in the knowledge of Mr. Thompson himself. No action could be taken to investigate the grievance without first holding a grievance meeting with the claimant to understand who the allegations were against or what he said the behaviour was that he was complaining about.
29. Mr. Thompson interpreted the claimant’s request regarding the meeting as a request that the meeting only be arranged and take place after the claimant was signed as fit to return to work. That was a reasonable interpretation of the email.

30. Mr. Thompson did not acknowledge the claimant's email at any time between receiving the email and the claimant's resignation. Mr. Thompson did not acknowledge the grievance as he did not consider it necessary to do so. It was not necessary because the claimant had not requested an acknowledgement and because the claimant had asked for the grievance meeting to be arranged after he was fit to return to work and the claimant was signed off sick from work at that time.
31. Mr. Thompson did not take any steps to investigate the claimant's allegations prior to the claimant resigning. The contents of the grievance were vague and general in nature, and he could not know the scope of any investigation without first speaking to the claimant. Mr. Thompson did not identify any suitable dates for a grievance meeting because he did not know when the claimant would be fit to return to work. He did not identify or discuss a suitable venue for the meeting with the claimant. The claimant did not query whether the respondent had received his grievance or chase up a response to his grievance in the two months before his resignation. There was no correspondence or discussion of the grievance at all between the claimant and the respondent between it being raised and the claimant's resignation.
32. The claimant did not expect the respondent to arrange a meeting to discuss his grievance until he was fit to return to work.
33. The claimant remained on sick leave because of his thumb injury until 7th May 2025. At no time during his sickness absence was the reason for his absence related to stress caused by anything in the workplace. He resigned from his employment with immediate effect on 7th May 2025, when his fit note expired. There was no opportunity to, or expectation that the respondent would, arrange a grievance meeting prior to the claimant's resignation.
34. The claimant resigned for a number of reasons:
- a. his grievance had not been acknowledged or progressed,
 - b. he was unhappy about Mr. Thompson challenging his performance and conduct,
 - c. he recognised from discussions on 3rd March 2025 that he would only succeed to the ownership of the business if he could buy out Mr. Thompson, which he could not afford to do; and
 - d. he had found alternative employment with Revive Asset Ltd, which had already commenced during his sickness absence.

Customer Payments

35. When customers order goods from the respondent they can pay by credit or debit card, bank transfer to the company bank account, by cheque, by cash or to the company's PayPal account.
36. The claimant set up the respondent's PayPal account using the email address covers33@covers33.co.uk. The respondent did not have any other PayPal account. The claimant was responsible for monitoring funds sent by customers into that PayPal account and transferring those funds to the respondent's company bank account.

37. No employee of the respondent, including the claimant, were authorised to provide customers with their own personal PayPal accounts or personal bank accounts for the purpose of paying for their orders. The claimant did not have an arrangement with Mr. Thompson that customers could make payment for orders into the claimant's personal bank account or personal PayPal account. He also did not have an arrangement with Mr. Thompson that he would pay any funds that were paid into his personal accounts to the respondent by selling his own personal goods on eBay and then giving Mr. Thompson cash. Mr. Thompson was not aware of any such arrangements and did not authorise any such arrangements, nor did anyone else from the respondent.
38. The suggestion that these arrangements existed was not set out by the claimant in his claim form and was not contained in his witness statement. It was raised for the first time in cross examination. There was no contemporaneous evidence in the bundle of documents to support that assertion. The evidence the claimant did rely on as evidence that Mr. Thompson was aware of and authorised the arrangement was a screenshot of a transaction whereby Mr. Thompson sent a payment to the claimant's personal PayPal account. That was solely evidence that Mr. Thompson was aware that the claimant had a personal PayPal account. No evidence was given by either party as to what those payments actually related to, but it did not support the claimant's assertion that the arrangements existed and were authorised by the respondent.
39. Mrs. Birch became aware that the claimant had been providing his personal PayPal and bank account details to customers for payment of orders during the claimant's sickness absence on 23rd March 2025. Mrs. Birch immediately reported her concerns verbally to Mr. Thompson. The respondent commenced an investigation and located emails between the claimant and customers that evidenced that he had been providing his personal PayPal or bank details to customers since 2019. The claimant admitted in cross examination that he had provided his personal account details to customers.

System Access

40. During the claimant's sickness absence, the respondent was not able to access business IT accounts because they had been registered to require two factor authentication using the claimant's personal email and mobile phone number. The personal email and mobile number were used because the claimant did not have a business phone number or access to an alternative email address if it was required.
41. The respondent attempted to add Mrs. Birch to the system as an administrator of Google Workspace. The claimant was the Super User and was required to authorise that request. He declined it because he had not been informed that it was going to be sent and did not know if Mrs. Birch had been authorised by the respondent to administer the system. The claimant did not contact the respondent to query the request before declining it or afterwards.

42. On 15th April 2025 the respondent wrote to the claimant to request access to the business systems. The claimant replied on 22nd April stating he could not provide the information or carry out the actions to provide access because his email account had been restricted by the respondent and to explain his actions regarding declining the request for Mrs. Birch to be added as an administrator and why he had used personal details for two factor authentication.
43. On 22nd April 2025 the respondent wrote to the claimant to provide a solution to the difficulties, stating that he needed to remove two factor authentication using his personal devices and any necessary authorisation emails or messages would be forwarded to him to allow him to action the required steps. The claimant did not respond to the email or take the steps required to provide the respondent with access to their systems and accounts. The claimant provided no explanation for his actions in his statement or in his oral evidence.

Matters identified by the respondent after termination of employment

44. During his sickness absence the claimant began working for Revive Asset Ltd. This was a company run by someone he lived with at that time. When he resigned from his employment, he continued to work for Revive Asset Ltd whilst he searched for alternative work.
45. The claimant was responsible for setting up email profiles for the respondent. During his employment he created an email profile in the name of his girlfriend, Charlotte Wheeler. Charlotte Wheeler was not an employee of the respondent and there was no reason for her to have an email profile on the respondent's system. The claimant used the email address to provide external third parties with a contact email address that would appear to be for the respondent, but the correspondence would go to him.
46. On 10th March 2025, the claimant completed a tenancy application for an address in Ripponden. In the tenancy application he named the respondent as his current employer. The claimant named his girlfriend, Charlotte Wheeler, as the contact for a reference from the respondent. He stated that Ms Wheeler was the respondent's HR Manager, he provided the falsely created company email address as the contact email and provided his girlfriend's personal phone number. The claimant gave evidence that although the application contents were wrongly created, the application was not submitted. This information was entered dishonestly as I find that the claimant knew the information was false and had intended that third parties would rely upon it as genuine.
47. On 23rd June 2025 the claimant falsely and dishonestly created a reference for himself, which purported to be written by Juliet Thompson on behalf of the respondent. He used the respondent's company logo, stated that Mrs. Thompson was the respondent's HR Manager and provided a telephone number. Mrs. Thompson did not write that reference, she was not the respondent's HR Manager, the telephone number provided was the claimant's girlfriend's telephone number and not that of Mrs. Thompson. I do not accept the claimant's suggestion that this was created to test whether someone had access to his personal OneDrive on the company computer, by waiting to see if anybody called the number. It was created to provide to

his new employer, following a successful interview and he knew the information was false and would be relied upon by a third party.

48. The claimant commenced employment with a new employer, Peter Jackson & Co Ltd on 7th July 2025 and he remains employed by them. His salary in his new employment is £35,000 per annum before deduction of tax and national insurance. He also receives a contribution towards a pension scheme at the minimum statutory level. He is also entitled to an annual bonus of £10,000 if he achieves his performance targets.
49. The claimant applied for one further role shortly after he started work with his current employer, which was unsuccessful. He has not taken any further steps to find alternative work since then.

Law

50. Section 95 Employment Rights Act 1996 (ERA)

- (1) For the purposes of this Part an employee is dismissed by his employer 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 the employer's conduct.

51. Section 98 ERA

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it—
- (b) relates to the conduct of the employee,
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

52. **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA**, in which the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract. As Lord Denning MR put it: 'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of

the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance'

53. In order to claim constructive dismissal, the employee must establish that:
- there was a fundamental breach of contract on the part of the employer,
 - the employer's breach caused the employee to resign. and
 - the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
54. **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL**- the duty is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. There are two questions to be asked when determining whether the term has, in fact, been breached. These are:
- was there 'reasonable and proper cause' for the conduct?
 - if not, was the conduct 'calculated or likely to destroy or seriously damage trust and confidence'?
55. **Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666, EAT**. To constitute a breach of the implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to 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 the employee cannot be expected to put up with it.' Further, any breach of that implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract'
56. **Morrow v Safeway Stores plc 2002 IRLR 9, EAT** - where an employer breaches the implied term of trust and confidence, the breach is 'inevitably' fundamental.
57. **Leeds Dental Team Ltd v Rose 2014 ICR 94, EAT** – the test of whether there was a repudiatory breach of contract is an objective one.
58. In **WA Goold (Pearmak) Ltd v McConnell and anor 1995 IRLR 516, EAT**, - an employer is under an implied duty to 'reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have'. A breach of trust and confidence may arise from the way in which the grievance is handled.
59. **Blackburn v Aldi Stores Ltd 2013 ICR D37, EAT**, - a failure to adhere to a proper procedure is capable of amounting, or contributing, to a breach of the implied term of trust and confidence. It is for the employment tribunal to assess whether what occurred was sufficiently serious as to amount to a breach of the implied term, since a failure to comply with a grievance procedure may take different forms and thus have different consequences.
60. **Price v Revenue and Customs Commissioners EAT 0518/10**, When considering whether a delay or failure to conduct a grievance procedure properly is serious enough to amount to a breach of trust and confidence, the question is whether the delay was conduct calculated or likely to destroy

or seriously damage the relationship of trust and confidence between the parties and is not a question of reasonableness.

Conclusion

Was the claimant dismissed?

Did the respondent raise a number of allegations against the claimant between December 2024 and March 2025?

61. Mr. Thompson did raise concerns regarding the claimant's conduct and performance in an informal meeting on 23rd December 2024. It is common ground between the parties that performance and conduct matters were raised in that meeting.

62. Mr. Thompson did not raise concerns about the claimant's performance or conduct in the meeting on 3rd March 2025. The meeting was arranged to discuss the claimant vacating the flat above The Silk Mill pub.

Did the respondent dismiss the claimant without notice or pay in a meeting on 23rd December 2024?

63. The respondent did not dismiss the claimant in the meeting on 23rd December 2024. The claimant was informed that his attitude and performance needed to improve. He was informed that he needed to vacate the flat above the Silk Mill pub. He was not dismissed by the respondent. The conversation was a difficult one and the discussion became heated. However, Mr. Thompson did not say anything to the claimant that amounted to a dismissal or could have been interpreted as such.

Did the respondent dismiss the claimant in a meeting on 3rd March 2025?

64. The respondent did not dismiss the claimant in the meeting on 3rd March 2025. The discussion centered around him vacating the flat above the Silk Mill pub, which was unrelated to his employment with the respondent. There was a verbal exchange between the parties regarding buy-out of the business, but this did not amount to a dismissal by the respondent. There was no discussion of any performance or conduct concerns during that meeting.

Did the respondent fail to acknowledge or address the claimant's grievance?

65. The respondent did not acknowledge the claimant's grievance at any time between it being raised and the claimant's resignation. Mr. Thompson accepted in evidence that he did not acknowledge the claimant's grievance.

66. The claimant's grievance specifically said, "please inform me of a suitable time for us to meet and discuss this grievance once I am approved fit for work". Mr. Thompson understood that to mean the claimant wanted a meeting date to be arranged and for the meeting to take place after he was fit to return to work. That was a reasonable interpretation of the claimant's words and the claimant accepted in oral evidence that it was possible that the respondent was simply respecting his request.

67. Mr. Thompson respected the claimant's request. The claimant was not fit to return to work at any time prior to his resignation. No meeting could therefore take place. In addition, the information provided by the claimant in the grievance was vague and did not provide sufficient information, such as dates, what had happened or who did the actions complained of, to allow Mr. Thompson to begin any investigation into the contents of the grievance prior to having a meeting with the claimant.

68. There was no meeting or investigation of the grievance, but that was not due to any failure on the respondent's part. It was because of the claimant's request. There was no failure to address the grievance, it remained a live matter that was to be progressed on the claimant's return. As he didn't return, it could not progress.

Did the conduct breach the implied term of mutual trust and confidence?

69. The implied term is that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The respondent's conduct must be more than unreasonable; it must be so serious that it goes to the root of the contract and is a repudiatory breach.

70. In deciding whether there was a breach of the implied term of mutual trust and confidence, an objective test must be used. That means I must make my decision, not on the basis of the employer's intentions or the actual effect on the claimant, but on whether a reasonable person in the claimant's position would regard the behaviour of the respondent as calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence.

Raising concerns with the claimant's performance and conduct

71. I have found that concerns regarding the claimant's performance and conduct were raised by the respondent in December 2024 in an informal meeting. Those concerns were raised with reasonable and proper cause. Mr. Thompson had observed a deterioration in the claimant's attitude and behaviour, and he had also received reports from the claimant's colleagues about concerns regarding his timekeeping and attendance.

72. It is a reasonable and appropriate management action to raise those concerns with the claimant for discussion. That can, initially, and when raising matters for the first time, be legitimately done on an informal basis to understand the claimant's position on those concerns. The claimant was in a senior position in a small company with only 5 employees including the claimant and Mr. Thompson as the director and it would be reasonable and proper in such circumstances for Mr. Thompson to want to discuss his concerns with the claimant before making any decision about whether to initiate a formal investigation or disciplinary process.

73. As there was reasonable and proper cause for the respondent's actions, they did not breach the implied term of mutual trust and confidence. Further, reasonably raising concerns regarding the claimant's conduct, would not amount to conduct that was calculated or likely to destroy or seriously

damage the relationship of mutual trust and confidence.

Grievance response

74. My findings in relation to the handling of the claimant's grievance mean that the only failure in respect of the grievance process was a failure to acknowledge the claimant's grievance.
75. The respondent is a small company. There is no grievance policy. Mr. Thompson was not aware of the existence or contents of the ACAS Code of Practice on Disciplinary and Grievance Procedures. Even if he had been aware of the contents of the ACAS code of practice on disciplinary and grievance procedures, that code of practice does not require acknowledgment of a grievance as a step in a reasonable process. The ACAS code requires that a meeting is arranged as the next step after a grievance is notified to the employer.
76. However, in circumstances where a meeting will not immediately be arranged, it would be reasonable to expect the grievance to be acknowledged as having been received.
77. When Mr. Thompson was asked why he did not acknowledge the grievance his response was "why should I" and went on to say that he did not acknowledge it because the claimant had not requested an acknowledgement. I understand and accept Mr. Thompson's position that he was seeking to comply with the claimant's indication that he would attend a grievance meeting when he was fit to work, but that does not provide an explanation for the failure to acknowledge the grievance. It would have been a simple and easy step to send a message to the claimant to say that his grievance had been received and/or would be dealt with when he was fit to return to work.
78. Assessed objectively there was no reasonable and proper cause for the failure to acknowledge the grievance.
79. That said, assessed objectively, I find that, in isolation, a failure to acknowledge a grievance, was not conduct that was calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between an employer and employee.
80. The respondent is a small business of only 5 employees including the claimant and Mr. Thompson. The majority of communication took place face to face or by WhatsApp messages rather than by email or letter and communication was predominantly informal in nature. The respondent had not dealt with grievances at all before and it was common practice for concerns to be addressed informally by discussion between Mr. Thompson and employees.
81. The claimant as a senior member of staff that had worked in the respondent organisation for almost 11 years would have known that there was no written grievance policy and that matters of concern were addressed informally as a matter of normal practice.
82. There was no intention on the part of the respondent to ignore the claimant's

grievance and the failure to acknowledge was a consequence of the respondent's understanding that the claimant did not want to progress his grievance until he was fit to return to work. Whilst the employer's subjective intention is not determinative, it forms part of the factual context when assessing objectively whether the conduct was likely to destroy or seriously damage trust and confidence.

83. This was not a wholesale failure to afford the claimant a means of having his grievance dealt with or a failure to actually deal with it. It is simply a failure to acknowledge an email in circumstances where email is not the usual form of communication between members of staff or between Mr. Thompson and the claimant.
84. It was an isolated incident. The claimant did not follow up or chase the respondent to check whether his message had been received. Whilst there is no obligation on him to do so it does indicate that this was not a matter of significant concern for the claimant at the time and that he was not expecting an immediate response to his grievance because he was not fit to work.
85. The procedure was not seriously flawed. Ultimately the procedure never got off the ground because of the claimant's indication that a meeting could only take place when he was fit to return to work, which the respondent respected. The claimant knew no progress would be made on his grievance until that time.
86. The claimant's sickness absence was not caused by the respondent's actions, he was not suffering from stress as a result, and he was not prevented from returning to work because of the respondent's behaviour.
87. It is unfortunate that the respondent did not acknowledge the claimant's grievance. They were in contact with the claimant regarding operational matters and it would have been simple to confirm receipt and that it would be dealt with when the claimant was fit to work. However, not every failure by an employer, even where there is no reasonable and proper cause for it, constitutes a breach of the implied term of mutual trust and confidence or results in an employee being constructively dismissed. In the context of the respondent business and the claimant's position as a senior employee in a small business, Mr. Thompson's failure was an isolated and relatively minor omission. Assessed objectively, it was not conduct so serious that it was calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between the parties.
88. I have considered whether the two events (raising concerns and not acknowledging the grievance), taken together could cumulatively amount to conduct calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence and I have found that it would not. The concerns were raised with reasonable and proper cause and the failure to acknowledge the grievance was well below the threshold of conduct that would reach the required threshold. Whilst the claimant may not have liked being challenged about his conduct and performance, assessed objectively in the context of the parties before me, the combined conduct does not reach the required threshold. Even taken together, they would not be calculated or likely to destroy the relationship of mutual trust and confidence.

89. On that basis, there was no breach of the implied term of mutual trust and confidence. As there was no breach of the claimant's contract, the claimant was not dismissed in circumstances in which he is entitled to terminate his contract without notice by reason of the respondent's conduct.

Approved by:

Employment Judge Edwards

4th September 2026

Notes

All judgments (apart from judgments under Rule 51) and any written full 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/