



EMPLOYMENT TRIBUNALS

Claimant: A Bannon
Respondent: ANS Group Ltd
On: 2 June 2026
Before: Employment Judge McAvoy Newns
Heard at: Manchester Employment Tribunal (via CVP)

Appearances:

For the Claimant: In person
For the Respondent: Did not attend (no ET3 filed)

WRITTEN REASONS

Background

1. During the hearing on 2 June 2026, I gave an oral judgment confirming that the Claimant had been constructively unfairly dismissed contrary to section 98 of the Employment Rights Act 1996 (the "ERA"). I ordered the Respondent to pay a basic award of **£6,154.29** and a compensatory award of **£25,571.35**.
2. On 8 July 2026, the Respondent's representative applied for written reasons. There was a short delay in this application being sent to me. These reasons have been provided as soon as practicable following this request. For the purposes of Rule 60 of The Employment Tribunal Procedure Rules 2024, these are full written reasons.

Form of hearing

3. This was a remote hearing which was not objected to. The hearing took place via CVP, the Tribunal's video conferencing platform.

Parties

4. The Claimant attended the hearing in person. The Respondent did not attend. This was unsurprising, given that the Respondent had not filed an ET3. I noted that the Respondent was active on companies house and that the claim had been served on the Respondent's registered address. I also noted that a letter had been sent to the Respondent on 28 May 2026 explaining that no response had been received and that a Rule 22 Judgment may be issued.
5. On 29 April 2026, the Claimant applied for a Rule 22 Judgment. This was not addressed prior to today's hearing. I explained to the Claimant that, based on the available material, a determination of her claim could not properly be made. I explained I would need to hear oral evidence from her before doing so, which I did during this hearing. Pursuant to Rule 47, I proceeded in the absence of the Respondent. This was compliant with the overriding objective for the reasons explained above.

Issues

6. In accordance with section 95(1)(c) of the ERA, did the Claimant terminate the contract under which she was employed in circumstances in which she was entitled to do so by reason of the Respondent's conduct? In this regard the Claimant relied upon a breach of the implied term of trust and confidence in respect to several matters principally involving her line manager.
7. This required determination of the following:
 1. Did the Respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent? Did it have reasonable and proper cause for doing so?;
 2. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end;
 3. Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation; and
 4. Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that she chose to keep the contract alive even after the breach.
8. If the Claimant was constructively dismissed, the next issue was whether the Respondent had a fair reason for such dismissal, considering those prescribed by section 98 of the ERA. The burden of proof in this regard was on the Respondent. The next issue was whether the Respondent acted reasonably in so dismissing in accordance with section 98(4) of the ERA.

9. If the claim succeeded, the next issue was to consider remedy. The Claimant confirmed she was not interested in reinstatement or reengagement. Therefore, I had to decide what (if any) basic and compensatory award to make.

Evidence

10. Contrary to the case management orders that had been made, the Claimant did not serve a witness statement. Instead, she swore to the contents of her ET1 and appendix (namely a detailed letter to "Sheryl"). I asked the Claimant some questions about her evidence. She provided a small number of documents to consider. I considered it to be compliant with the overriding objective to proceed in this way, given that the Respondent had not attended nor filed an ET3. In particular, this was proportionate, avoided delay and flexible.
11. The Claimant's evidence was that she had a strained relationship with her manager, K. Her evidence contained numerous references to belittling behaviours by K towards her. Although the claim was served on the Respondent's registered address, I am conscious that these Reasons will be publicly available and, as K did not give evidence at this hearing, I have decided to not name K in full. She has simply been referred to as K in these Reasons.

Findings of fact

12. The Claimant was employed by the Respondent as a Lead Auditor from 17 August 2017 until 5 December 2025. Her gross monthly pay was £2,963.17. Her net monthly pay was £2,314.77.
13. Although the Claimant's contracted hours of work were from 9am to 5pm, she regularly worked significantly in excess of those. For instance, she would regularly begin work at 5.30am and sometimes still be working at 3.30am. This started becoming a serious problem for the Claimant in 2024 and continued up to the commencement of the Claimant's sickness absence in July 2025.
14. Between 2022 and 2025, the Claimant suffered multiple chest infections and was hospitalised with suspected TB. However, despite being unwell, she was still required to work due to the volume of work she was required to complete. She received no support from K during this time.
15. K also booked external audits for the Claimant and her colleagues to undertake during school holidays, when the audits could have been undertaken outside of school holidays. This prevented the Claimant from taking annual leave over the summer when her children were on holiday from school.
16. In late 2023 and throughout 2024, the Claimant raised concerns to K about document control management. These concerns were ignored and the Respondent's external auditor gave the Respondent a "Major Non-Conformance".
17. On 22 March 2024, in the presence of others, the Claimant and her colleague questioned the accuracy of numbers provided by K as they differed from their

own calculations and those of an external provider. K refused to listen or clarify where her calculations had come from. She was belittling and dismissive to the Claimant, upsetting the Claimant.

18. As a result of K's behaviour, and the impact of the same on the Claimant's mental health, the Claimant requested a reduction in her hours from 5 to 3 days per week. This was refused due to the high levels of workload and limited resources. K did not make any attempts to help the Claimant manage her workload.
19. The behaviours also impacted the Claimant's colleagues. One of such colleagues, who I've referred to as J, left the Respondent. The Claimant's evidence was that she was told by J that J had left as a result of such behaviours. This also caused the Claimant's workload to double. It took K six months to find a replacement for J. As no suitable replacement could be found, K decided to promote an unsuitable person into the position, further increasing the Claimant's workload. This left the Claimant feeling undermined; that an employee without the requisite experience could be promoted into the same role that she was undertaking.
20. In late 2024, K submitted a Sustainability Statement that the Claimant had produced. K had referred to it as her own work, failing to give the Claimant any credit for the fact she had completed the work herself.
21. Prior to 2024, the Claimant's performance rating was "Solid Performer". However, in 2024, K downgraded this to "Developing in Role". When the Claimant enquired about this, K told her that she had not made the decision to downgrade her and that the decision had been made by HR.
22. Although her role comprised responsibility for environmental management and required her to participate in the Respondent's Environmental Steering Group meetings, K excluded the Claimant from such meetings from around January 2024 to July 2025.
23. On 1 July 2025, the Claimant met with K and explained that the appointed replacement for J did not have the necessary qualifications or experience for the role. K said that the employee had voluntarily applied for the role but the Claimant was aware, from speaking with the employee directly, that she was asked to apply for it by K after attempts to fill the role had failed.
24. On 15 July 2025, the Claimant started a period of sickness absence and did not return to work.
25. At around this time she submitted a letter to HR, setting out the concerns. She was required to engage with the Respondent in regard to these matters and her sickness absence until October 2025.
26. On 5 October 2025, the Claimant resigned with notice. She had not secured an alternative role before doing so.

27. The Respondent suggested that she have an occupational health ("OH") appointment and submit a formal complaint as opposed to resigning.
28. On 9 October 2025, the Claimant attended an appointment with OH. The OH report was dated the same date. This recorded the practitioner's assessment that her difficulties appeared to be a reaction to stressful circumstances at work and within the work environment. It also recorded their assessment that the Claimant's mental health was likely to improve if her concerns were acknowledged and addressed.
29. On or around 11/12 October 2025, the Claimant submitted a formal complaint. However, after reflecting on the advice from occupational health, she decided to proceed with her resignation. This was because this advice helped her realise that continuing to work with K and for the Respondent was unlikely to improve her mental health.
30. Since leaving the Respondent, the Claimant had been applying for jobs on a daily basis. She had had 8 or 9 interviews. She had progressed to stage two but had not been made any offers. She has regular support with her applications from the Job Centre. Securing another role is proving more difficult than she expected. She received job seekers allowance from 10 December 2025 and her final payment was due on 10 June 2026. She had not received any other benefits.

Relevant law

Liability

31. Pursuant to section 95(1)(c) of the ERA:

*".....an employee is dismissed by his employer if
..... 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."*

32. In ***Western Excavating (ECC) Ltd v Sharp 1978 ICR 221***, the Court of Appeal ruled that, for an employer's conduct to give rise to a constructive dismissal, it 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. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.'
33. In ***Lewis v Motorworld Garages Ltd 1986 ICR 157***, the Court of Appeal held that a course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal

following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract.

34. In ***Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1***, the Court of Appeal held that, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign. The Court of Appeal in ***Kaur*** proceeded to offer guidance to Tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed:

1. 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?
2. has he or she affirmed the contract since that act?
3. if not, was that act (or omission) by itself a repudiatory breach of contract?
4. 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 trust and confidence?
5. did the employee resign in response (or partly in response) to that breach?

35. In ***Logan v Customs and Excise Commissioners 2004 ICR 1***, the Court of Appeal held that there is no need for there to be 'proximity in time or in nature' between the last straw and the previous act of the employer.

36. In ***Omilaju v Waltham Forest London Borough Council 2005 ICR 481***, the Court of Appeal explained that the act constituting the last straw does not have to be of the same character as the earlier acts, nor need it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective. And while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test. In this case it was also held that any breach of the implied term of trust and confidence is a repudiatory breach of contract. This is because the very essence of the breach of the implied term is that it is 'calculated or likely to destroy or seriously damage the relationship' (para 14).

37. In ***Morrow v Safeway Stores plc*** 2002 IRLR 9, the Employment Appeal Tribunal held that where an employer breaches the implied term of trust and confidence, the breach is 'inevitably' fundamental.
38. In ***Abbycars (West Horndon) Ltd v Ford*** EAT 0472/07, the Employment Appeal Tribunal held that 'the crucial question is whether the repudiatory breach played a part in the dismissal', and even if the employee leaves for 'a whole host of reasons', he or she can claim constructive dismissal 'if the repudiatory breach is one of the factors relied upon'.
39. In ***Weathersfield Ltd t/a Van and Truck Rentals v Sargent*** 1999 ICR 425, the Court of Appeal held that it was not necessary for an employee, in order to prove that a resignation was caused by a breach of contract, to inform the employer immediately of the reasons for his or her resignation. It was for the Tribunal in each case to determine, as a matter of fact, whether the employee resigned in response to the employer's breach rather than for some other reason.
40. In ***Nottingham CC v Meikle*** [2004] IRLR 703 (CA) it was held that the repudiatory breach need not be the sole cause or even the principal cause for the resignation provided the employee resigned in response at least in part to the breach. The fact that the resignation may have been as a result of a number of acts or inactions by an employer, some of which do not amount to a breach of contract, does not vitiate the resignation in response to those acts that constitute a repudiatory breach.

Remedy

41. S.119 of the ERA states:

- (1) *Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—*
- (a) *determining the period, ending with the effective date of termination, during which the employee has been continuously employed,*
- (b) *reckoning backwards from the end of that period the number of years of employment falling within that period, and*
- (c) *allowing the appropriate amount for each of those years of employment.*
- (2) *In subsection (1)(c) "the appropriate amount" means—*
- (a) *one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,*
- (b) *one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and*
- (c) *half a week's pay for a year of employment not within paragraph (a) or (b).*
- (3) *Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.*

42. The relevant parts of s. 123 of the ERA states:

- (1) *Subject to the provisions of this section and [sections 124, 124A and 126], the amount of the compensatory award shall be such amount as the tribunal*

considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122 in respect of the same dismissal).

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

43. In **Cooper Contracting Ltd v Lindsey 2016 ICR D3, EAT**, Mr Justice Langstaff (then President of the EAT) summarised a number of principles drawn from the earlier case law that should be used to guide tribunals when considering whether there has been a failure to mitigate loss. He observed that there were considerable dangers in approaching the matter as though the duty to mitigate required the taking of all reasonable steps to lessen loss. Such an approach risked diverting focus away from the legal principles that applied to mitigation and might lead erroneously to the conclusion that if the employer could show a single reasonable step that was not taken it would inevitably succeed in its submission that there had been a wholesale failure to mitigate. To avoid such a mistake, it was imperative that the following guidance be firmly borne in mind:

- a. the burden of proof regarding a failure to mitigate is on the wrongdoer. A claimant does not have to prove that he or she has mitigated the loss;
- b. if evidence as to mitigation is not put before the employment tribunal by the wrongdoer, it has no obligation to look for that evidence or draw inferences. This is how the burden of proof works in this context: responsibility for providing the relevant information belongs to the employer;
- c. the employer must prove that the claimant has acted unreasonably. The latter does not have to show that what he or she did was reasonable. What is reasonable or unreasonable in this regard is a question of fact, to be determined after taking into account the wishes of the claimant as

one of the relevant circumstances, although it remains the tribunal's own assessment of reasonableness — not the claimant's — that counts;

- d. the tribunal should not apply a standard to the claimant that is too demanding. He or she should not be put on trial as if the losses were his or her fault, given that the central cause of those losses was the act of the employer in unfairly dismissing the employee;
- e. the relevant test can be summarised by saying that it is for the wrongdoer to show that the claimant has acted unreasonably in failing to mitigate; and
- f. in a case where it might be reasonable for a claimant to have taken a better paid job, this fact does not necessarily satisfy the test: it is simply important evidence that might assist the tribunal to conclude that the employee has acted unreasonably.

Conclusions

Liability

- 44. The Claimant gave unchallenged evidence about her reasons for resigning and why she resigned when she did. She gave evidence credibly, accepting when she did not know something and expanding upon the information she was aware of. There was no basis upon which I felt the need to question the genuineness or truthfulness of the Claimant's evidence. I accepted it in full.
- 45. The Claimant resigned due to the conduct of manager, K over a sustained period of time. This included requiring the Claimant to regularly work in excess of her contracted hours right up to the point of the Claimant's breakdown, considered later.
- 46. The workload placed on the Claimant also resulted in the Claimant having to work when on certified sick leave for serious medical issues. Additionally, because of this and the way that K had organised the work, the Claimant was prevented from being able to take annual leave over the summer holidays when her children were off school.
- 47. In addition, K downgraded the Claimant's performance rating from solid performer to developing in role. Additionally, she ignored the Claimant's concerns about document control issues resulting in an external auditor finding that the Respondent was not compliant in or around May 2025. Additionally, she excluded the Claimant from meetings relevant to her role between January 2024 and July 2025.
- 48. This all culminated in the Claimant having a breakdown and commencing a period of sickness absence on 15 July 2025. She did not return to work after this date.

49. The Claimant submitted her resignation on 5 October 2025. The Respondent had suggested that she have an OH appointment and submit a formal complaint as opposed to resigning. She did so, demonstrating that she may not be averse to retracting her notice which I recognise is relevant to affirmation and have considered this further later.
50. Soon after the OH practitioner advised her that the unresolved situation with K was impacting upon her recovery, which happened on 9 October 2025, she made her settled decision to resign. Her employment terminated on 5 December 2025. She had no job offers at the time and remains unemployed.
51. The formal complaint was investigated afterwards and the Claimant was informed that K was required to engage in management training, demonstrating that aspects of the complaint had been upheld. The Claimant did not appeal against the outcome of the complaint.
52. The OH report following the 9 October 2025 meeting was provided to me. This records the practitioner's assessment that the Claimant's then current mental health difficulties appeared to be a reaction to stressful circumstances at work and that the Claimant did not have significant issues beforehand. They also observed that being required to engage in meetings with K was likely to exacerbate her condition.
53. Approaching matters objectively, I concluded that the conduct of K, as explained earlier, was likely to seriously damage the relationship of confidence and trust between the parties. Over a sustained period of time the Claimant was required to work in excess of her hours and subjected to other behaviours that culminated in her breaking down and going off sick. Upon learning from OH that she was unlikely to recover unless her situation with K was resolved, and knowing that she could no longer work with K given the history and the existence of the formal complaint, the Claimant resigned without having another job to go to. There is no evidence of any alleged reasonable and proper cause for K's behaviour.
54. It is the following factors that lead me to conclude in particular that, objectively, the high threshold for establishing a breach of this implied term have been met: the Claimant had no significant mental health issues yet broke down after years of enduring K's conduct, she had 8 years' service with the Respondent yet felt forced to resign without having an alternative job to go to and, as part of considering the Claimant's complaint, the Respondent concluded that K needed management training, demonstrating that aspects of the Claimant's complaints about K are likely to have been upheld.
55. I have also concluded that the C resigned promptly and, even though she did so with notice, she did not affirm her contract or waive the breaches. By engaging in an occupational health referral or a formal complaint process after

submitting her resignation on 5 October 2025, the Claimant did not affirm the contract. She was merely engaging with the Respondent's requests whilst under notice of termination. After receiving the benefit of medical advice and realising a few days later that adhering to the Respondent's requests would not improve the situation, and could likely worsen it, she made her settled decision to leave.

Remedy

56. Unsurprisingly, the Claimant informed me that she did not wish to be reinstated or reengaged.
57. The first form of compensation is a basic award, calculated in the same way as a statutory redundancy payment. Based on the Claimant's age, length of service and gross weekly pay, this amounts to £6,154.29.
58. As of the date of the hearing, the Claimant had lost 25.5 weeks of wages. She has made reasonable attempts to mitigate her losses but has not been successful. In this regard, she has been applying for jobs daily and I'm conscious that she does not have the burden of proving that she took all reasonable steps to mitigate her loss. She's had around 8-9 interviews. She has managed to get to stage 2 on several occasions but didn't get offered the role. She's also applying for lower grade jobs. She is therefore awarded these losses in full. This amounts to £13,621.53.
59. In assessing future loss of earnings, I'm conscious that the Claimant has been extensively searching for alternative roles without success and that her ill health is likely to be impacting upon her success. Once this Tribunal process is over, recovery may be more imminent. It could be a further six months before she secures a new role however I consider it likely that she will do so then, given the volume of applications being made and the success in obtaining interviews so far. On this basis, I award a further six months net pay, totalling £13,888.62.
60. I also award loss of statutory rights of £500.
61. The Claimant needs to give credit for the JSA received and due to be received. This amounts to £2,438.80.
62. The recoupment provisions apply.

Case Number: 6041649/2025

Chris McAvoy Newns

Employment Judge McAvoy Newns

28 August 2026

**Sent to the parties on:
9 September 2026**

For the Tribunal: