EMPLOYMENT TRIBUNALS

Claimant: **Mr Ashley Granger**

Respondent: **GXO Logistics UK Limited**

Heard at: **Exeter by Cloud Virtual Platform on 04 and 05 March 2026**

Before: **Employment Judge Gibson**

Representation:

Claimant: In person
Respondent: Eleanor Wheeler of Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is:

That the Claimant's complaint of constructive unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. The Claimant Mr Ashley Granger was employed by the Respondent between 13 December 2020 and 13 January 2025.

2. Mr Granger was initially employed as a transportation manager and was promoted to fleet compliance manager in April 2022 until he resigned without notice on 13 January 2025.

3. He worked at the Respondent's Coop depot in Avonmouth

4. By claim form presented on 01 February 2025 Mr Granger brought a complaint of constructive unfair dismissal.

5. The Claimant alleged that:

    5.1. The actions of his employer in relation to grievances he had raised; and

    5.2. The Respondent's treatment of him; including its failure to pay him a salary he was promised or to provide him with a company car,

    entitled him to resign and that his resignation amounted to a dismissal which was unfair.

6. The Respondent denied the Claimant's complaints on the basis:

    6.1. It did not commit any repudiatory breach of contract;

    6.2. The Claimant did not resign in response to any such alleged breach;

    6.3. The Claimant affirmed his contract of employment before his resignation; and

    6.4. The Claimant resigned and there was no dismissal.

7. Before I continue, I would like to sincerely apologise to the parties for the lateness of this reserved judgment and reasons.

Procedure and Evidence

8. The hearing took place over two days by remote video platform on 04 and 05 March 2026.

9. The Claimant was not legally represented. The Respondent was represented by Eleanor Wheeler of Counsel.

10. I was referred to a bundle of 448 pages of documentary evidence. The Respondent had produced an agreed list of issues.

11. I was provided with witness statements from:

    11.1. The Claimant;

    11.2. For the Respondent, Mr Chris Curtis who was the transport general manager at the Respondent's Co-op site in Avonmouth and who was Mr Granger's manager; and

    11.3. For the Respondent, Mr Andy Flynn, a general manager who dealt

with a grievance raised by the Claimant.

12. All three gave oral evidence and were cross-examined. The Claimant did not call any other witnesses.

The Issues

13. As the Claimant was a litigant in person and because there had been no case management hearing, I was careful to remind him of the issues I would have to determine.

14. The Claimant claims the Respondent acted in fundamental breach of his employment contract in respect of the implied term relating to mutual trust and confidence. The parties had agreed a List of Issues dated 17 February (page 446 of the bundle) which recorded it was the breach of the implied term of mutual trust and confidence that formed the basis of Mr Granger's case. It set out the following acts or incidents I needed to consider:

    14.1. When the Claimant raised a grievance on 11 June 2024 concerning a breach of personal information and/or the making of slanderous comments by his manager, the Respondent in its handling of the grievance process and subsequent appeal failed to interview a key witness (the "2024 Grievance");

    14.2. The Respondent rejected the Claimant's flexible working application made on 14 August 2024 to work from home until after the 2024 Grievance was concluded (the "Flexible Working Request");

    14.3. In the role he commenced on 01 June 2021 the Claimant received a salary of £42,000 despite being informed by the Respondent that his salary was £45,000 (the "Salary Issue");

    14.4. In his role as compliance manager which he commenced on 05 November 2022, the Claimant did not receive a company car despite being told by his manager that he would get one (the "Company Car Entitlement Issue");

    14.5. The Respondent never gave the Claimant a grievance outcome letter in respect of a grievance he raised in January 2022 (the "2022 Grievance"); and

    14.6. In late 2022/early 2023, the Claimant's line manager told him one minute he was a "wizard then a wanker" (the "Bad Language Issue").

15. To show constructive unfair dismissal these were the questions I had to decide:

15.1. Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

15.2. Whether it had reasonable and proper cause for doing so.

16. Did the Claimant resign because of the breach? I needed to determine whether the breach was so serious that the Claimant was entitled to treat his employment contract as being at an end.

17. Did the Claimant tarry or wait before resigning and affirm the contract?

18. In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s98(4) of the Employment Rights Act 1996 (the "ERA 1996").

19. In summary the key matters for my consideration were whether the Respondent's conduct amounted individually or cumulatively to a repudiatory breach of the implied term of mutual trust and confidence in the Claimant's contract of employment.

Preliminary Matters

20. On the first day of the hearing I was sent an email from the Claimant setting out what appeared to be a further complaint of breach of contract (the "Potential BOC Complaint"). He asked for the email to be added to his witness statement.

21. The email dated 04 March 2026 set out the following:

21.1. In relation to the permanent transport manager role to which the Claimant was appointed to in June 2021 the job was advertised at £45,000 a year which was confirmed in an email;

21.2. When Mr Granger was told by the Respondent that the salary was £42,000, the Claimant said negotiated that two training packages called NEBOSH and CPC would be paid for by the business;

21.3. The Claimant was unable to complete the training within the specified time of a year primarily because the Respondent could not release him; and

21.4. The NEBOSH course was not rescheduled.

21.5. The Claimant said: "*This formed part of my contract and when I left GXO I expected this to be honoured as this was prior to any other role.*"

22. The Claimant also applied for some late documentary evidence to be included in the bundle in respect of the Potential BOC Complaint consisting of the following:

    22.1. A text message from Anna Marsh, a human resources administrator with the Respondent dated 21 May 2021 to the Claimant confirming the salary for his permanent transport manager role would be £45,000 a year (the "AM Text");

    22.2. Four images of strings of emails which related to the NEBOSH course (the "NEBOSH Emails"); and

    22.3. A form entitled "Off Cycle Adjustment for Ashley Granger" setting out his compensation for the permanent role as £42,000 a year (the "Form").

23. In relation to the AM Text and the form I determined these should be included in the bundle because they were evidence in relation to the Salary Issue. The Respondent did not object to this approach.

24. Counsel for the Respondent, Ms Wheeler, said she needed instructions as to the Respondent's position in relation to the contents of Mr Granger's 04 March 2026 email and the NEBOSH Emails and that if this was a new cause of action the Claimant would need to seek leave to amend his claim.

25. On the second day of the hearing Ms Wheeler said she had taken instructions. She said the NEBOSH Emails related to the booking of courses and did not appear to be contractual.

26. She said it might help matters if this additional documentary evidence and the 04 March Email were not treated as a new cause of action but as part of the evidence for the Salary Issue on which she would cross examine the Claimant.

27. The Claimant did not object to this proposal.

28. There was therefore no amendment application from the Claimant and I determined, taking into account the overriding objective in Rule 3 of the Employment Tribunal Procedure Rules 2024 the additional evidence would form part of the Salary Issue.

29. I was very grateful for Ms Wheeler's practical approach.

Background and Initial Findings of Fact

30. Having considered the documentary and oral evidence and the submissions from each side, I make the following findings of fact on the balance of

probabilities. Not every piece of evidence or every point made by the parties is dealt with in these reasons; only those necessary to explain my conclusions.

Employment History

31. The Claimant commenced employment with the business on 13 December 2020 as transportation manager where he was on a fixed term contract.

32. Mr Granger's position was made permanent with effect from 01 June 2021 with an annual salary of £42,000.

The 2022 Grievance

33. In January 2022 the Claimant raised a grievance with the Respondent in relation to allegations of bullying and harassment from his work colleagues in relation to his personal life.

34. Following an investigation the Respondent wrote to Mr Granger on 06 April 2022 confirming it had found bad behaviour by some of his colleagues (page 445 of the bundle).

35. The letter entitled "Outcome of Grievance Meeting" stated:

"*There were others involved who to some degree had actively gone out of their way to access the internet and search for information about you and then proceeded to share with others verbally and via social media platform. I firmly believe that this behavior* [sic] *is not and will not be condoned by GXO and has no place within our company values and the treatment of those that we work with. Therefore, I will recommend that formal and informal actions are taken against those who have played a part into your distress."*

The Company Car Entitlement Issue

36. In November 2022 the Claimant moved into a fleet compliance manager role, grade M2. Documentation issued on 22 November 2022 recorded he would be entitled to a company car or a cash allowance in accordance with the Respondent's company car policy (pages 81 to 99 of the bundle).

37. The compliance manager's day-to-day role was to ensure and assist with driver and agency compliance, training and fleet availability.

38. In April 2023 the Claimant was offered the role of fleet compliance manager on a full-time and permanent basis (page 104 of the bundle). His annual salary would be £45,864 and his grade was P3.

39. This offer did not refer to a company car as one of his benefits.

40. Mr Curtis said in respect of the Company Car Entitlement Issue when the Claimant formally became compliance manager there had been an error made in the relevant contract and Mr Granger had been given terms at an incorrect grade.

41. He said:

"*The way the Company's system works is that when a contract of employment is needed a request is recorded on the system and a contract is automatically generated, which then requires the removal of benefits that do not apply to the role.*

In this case the company car benefit was left on in error. I have absolutely no doubt that Mr Granger was fully aware that he was not entitled to a company car. No-one else on the contract, including at the other two sites where we operated for the customer, received a company car."

42. Mr Curtis added that he was the only person at the Avonmouth depot with a company car.

43. Mr Granger did not raise the issue with Mr Curtis but did sign a form opting for a company car (page 102 of the bundle).

44. The Respondent subsequently sent a letter to the Claimant dated 16 January 2023 (page 103 of the bundle) advising Mr Granger that there had been an administrative error in the documentation issued on 22 November 2022 and that his role was that of a secondment and that his annual salary would be £44,100 and his grade was M1.

45. This letter repeated that Mr Granger would be entitled to either a company car or a cash allowance.

46. The Respondent's company car policy shows that employees on grade M1 were eligible for a company car on a "business need only" whereas those on M2 were eligible without caveat.

47. Mr Curtis said the question of whether the Claimant was entitled to a company car was not raised again.

<u>The Salary Issue</u>

48. The Claimant claimed his permanent role as transport manager was advertised as being £45,000 a year which was confirmed in the AM Text.

49. Mr Curtis said the contractual documentation dated 07 June 2021 (at page 80 of the bundle) showed his salary had been increased to £42,000 a year when the Claimant took on the permanent role.

50. He said: "*This was the salary that Mr Granger was paid in accordance with the contract with the contract and, to my knowledge, he never raised this again until he resigned.*"

51. The Form also showed Mr Granger's salary would be £42,000 a year.

52. Mr Granger accepted in cross examination that the 07 June 2021 letter set out his salary correctly.

53. The Claimant alleged in his resignation letter of 13 January 2024 (at page 435 of the bundle):

    "*When I started my employment at* [the] *TM role was advertised at £45k had an email confirming this and then was told I would only get £42 due to my experience even though I was successful over 3 other candidates. Nothing was ever done about this so in the end I just had to deal with it.*"

54. Mr Granger was cross examined on the contents of his 04 March email and said he accepted the £42,000 salary on the basis of the promise of the Respondent paying for his training.

55. He said despite his best efforts he was unable to do the courses whilst he was working for the Respondent, primarily because he was needed on site.

56. He agreed there was no documentary evidence to corroborate his assertion that in accepting the £42,000 salary he had negotiated with the Respondent that it would pay for his training so as to cover the difference.

57. He said: "All I want is for the business to pay for the NEBOSH and CPC courses." He said this would be about £1200 for CPC and £3,600 for NEBOSH and he wanted the Respondent to honour its responsibilities to him.

58. Under cross examination the Claimant accepted the Respondent had booked and paid for the courses in 2022 and therefore there could be no breach of contract.

59. He also accepted that there was no further agreement with the Respondent after 2022 that he would be paid the course costs.

60. On this basis I find that although Mr Granger was unable to complete the courses, there was no subsequent breach of contract by the Respondent in relation to this matter.

61. I also find that the Claimant's evidence in relation to the negotiations he said he had to cover the difference between an annual salary of £42,000 and £45,000 lacked credibility particularly because there was no documentary

evidence and Mr Granger had waited so long before making these assertions.

62. Mr Granger could not explain why at the time of his appointment to the permanent transport manager position the question of the Respondent paying for future courses (because he was or might be unable to attend courses after he started working in the new role) would be discussed.

The 2024 Grievance

63. Between October 2023 and early 2024 Mr Granger was absent from work. He had a serious knee injury following a fall and said he was suffering from gout due to medication he was taking for chronic kidney disease. During this time the Claimant said he sometimes worked from home.

64. He returned to work on a phased basis for two weeks at the beginning of June where he would finish at 2pm.

65. On 11 June 2024 the Claimant raised a formal grievance. In substance he alleged rumours and comments had been made about him concerning steroid use, and that information concerning his sickness absence had been discussed inappropriately at work and that he had been treated unfairly.

66. The finer details of the 2024 Grievance were that on 05 June 2024 Mr Granger met with Mark Bolton (a contract transport manager) and Neli Stoyanova (the human resources lead for the business). This was a formal meeting ostensibly in relation to a conduct issue (the facts of which are not relevant) and where the Claimant became upset and Ms Stoyanova left the room.

67. While Mr Granger and Mr Bolton were alone, the Claimant said Mr Bolton told him it had been alleged he was "banging steroids" and that while he was unfit for work he had been "seen in the sun bed shop not on my crutches."

68. Mr Granger asked who had made the allegations but Mr Bolton refused to comment.

69. It subsequently transpired that it was Mr Curtis who had raised the question of steroid use.

70. Mr Curtis said:

    70.1. Around this time he had been informed by a colleague that the Claimant was taking steroids;

    70.2. He decided not to tell Mr Granger until he had researched whether there were health and safety implications;

70.3. Another reason for taking this approach with the Claimant was it could have had a detrimental impact on his mental health;

70.4. He asked the Respondent's health and safety team whether a drugs and alcohol test would identify steroid use which confirmed it would not; and

70.5. At the same time Mr Curtis told Mr Bolton (Mr Curtis's manager) that he had raised the question with the health and safety team.

71. He said:

"*I was completely open with Mr Granger about the fact I had asked this question and also informed him that the test would not show up steroids....Mr Granger initially got angry when I explained that I had asked the question of the health and safety team but I emphasised that I had a duty of care and needed to manage the risk.*"

72. It was the Claimant's case the steroids question made him extremely upset and that he thought Mr Curtis had lied to him and apparently "*spreading*" the allegations.

73. Mr Granger said:

"[It] *caused me so much stress as I felt totally let down lied to by someone who is meant to support.*"

74. I find Mr Curtis's version of events credible and candid. He accepted that he raised the question with the health and safety team and Mr Bolton. He was consistent in this when he was cross examined by the Claimant.

75. I find the Claimant genuinely thought he had been lied to by Mr Curtis and that he was the subject of damaging rumours in the workplace which impacted his mental health.

76. However despite Mr Granger's personal feelings, I do not find that he was lied to by Mr Curtis. It is my conclusion that Mr Granger was mistaken in his assumptions.

77. The Claimant raised his grievance in relation to his concerns over the steroid and sunbed allegations which he said were being gossiped about at the depot and were affecting his mental health.

78. A grievance meeting was held on 01 July 2024 which was chaired by Mr Flynn the general manager. At the meeting the Claimant was accompanied by Martin Sedlan, his union official

79. According to the notes of the grievance meeting Mr Sedlan did not

participate other than to confirm he had nothing to say.

80. However the Claimant stated that in response to the steroid allegation Mr Sedlan was present at an earlier conversation between Mr Granger, Mr Curtis and Ms Stoyanova where Mr Granger offered to take a drugs test.

81. Mr Granger also said Mr Sedlan spoke separately to Mr Curtis about the allegations and how upset the Claimant was.

82. Mr Flynn said the Claimant complained that there had been a complete breakdown of trust with the company and that Mr Curtis (Mr Granger's line manager) was the person who relayed the allegations to Mr Bolton.

83. Mr Flynn identified three points of grievance:

    83.1. Mr Bolton had discussed the Claimant's health conditions with a former employee;

    83.2. There were rumours that Mr Granger was taking steroids; and

    83.3. Mr Granger felt that he was being "victimised" because the business would not allow him to work from home.

84. Following an investigation, including interviews with Mr Bolton and Mr Curtis, Mr Flynn came to the following conclusions:

    84.1. Mr Granger was mistaken in his belief that Mr Bolton had spoken to a former employee about his health conditions;

    84.2. There was speculation in the business about the Claimant taking steroids;

    84.3. Mr Curtis had mentioned steroid use to Mr Granger but this was out of concern and he wanted to ensure the Claimant was fit to work; and

    84.4. The rejection of the Claimant's request to work from home was made for valid business reasons. (I will deal with this element of grievance process in the Flexible Working Request section in these reasons.)

85. Mr Flynn said:

"*While Mr Granger had reported that he felt that there had been a breakdown of trust with the Company, I found the business had shown care for Mr Granger's welfare and attempted to support him. The rumours that he was concerned about did not appear to be malicious rumours in any way, but were speculation and concern about his dramatic change in*

appearance.

There was no evidence that anyone had breached confidentiality in relation to Mr Granger's health or absence...."

86. The Claimant's grievance was not upheld and an outcome letter dated 12 August 2024 was sent to Mr Granger. It concluded there was insufficient evidence to uphold the allegations and recommended mediation.

87. Mr Granger appealed the outcome decision and this ended Mr Flynn's direct involvement with the grievance process.

88. Craig Woolrich the Respondent's investigation manager and regional general manager of cold stores conducted the appeal on 12 September 2024. Also present was Helen Tilsley, the company's regional human resources manager.

89. At the appeal meeting Mr Granger referred to Mr Sedlan as being a witness to the conversation about the Claimant taking a drugs test.

90. He said Mr Sedlan:

"...s*poke to him and told him how I was feeling because of it. He tried to pounce it off like it was nothing. I don't expect to be treated like this by my Line Manager, breakdown of trust and confidence not there no more, it makes it look like I am a liar and my integrity and honesty are key to me and I will put my hands up if I make a mistake, But integrity is everything to me.*"

91. It was Claimant's case that Mr Sedlan was a key witness for him and the fact the Respondent did not interview him was an important element in relation to assertions in 2024 Grievance.

92. The outcome of the appeal was confirmed in a letter to the Claimant dated 30 October 2024 from Ms Tilsley and upheld the original grievance decision. In relation to Mr Sedlan Ms Tilsley stated:

"*We discussed that you had alleged that there was another witness who had not been interviewed as part of the initial grievance investigation and we asked you to confirm who that was. You confirmed it was Martin Stedlan* [sic]*, Union Representative. You allege that after sending your e-mail to Mark in relation to a drugs test. You have spoken to Martin the next day and asked him to accompany you at a drugs test and that you wanted his support as a witness and also for the conversation to be documented with HR present as you felt the situation was out of control.*"

"*You allege that Martin explained to Chris that you were at home and upset and asked if anything had been done about people alleging you were using steroids...*"

"*Unfortunately I was not able to conduct an investigation meeting with Martin Stedlan* [sic] *who was not in the business at the time of the ongoing investigations. I do not believe it is appropriate to delay the conclusion of the investigation whilst awaiting the colleague's availability and given his position as shop steward and your engagement with this colleague to date, I do not believe he would be able to be relied upon as a viable witness at this stage of the process.*"

93. In respect of the 2024 Grievance I have concluded that Mr Sedlan was a witness to two conversations – the first where Mr Granger said he was prepared to undertake a drugs test and the second where he told Mr Curtis that the Claimant was upset by the allegations Mr Bolton raised with him.

94. While this evidence was important to the Claimant it did not go directly to the issues I had to determine in this case. I expand on this element later in these reasons.

95. The Claimant's grounds of appeal were recorded by Ms Tilsley as follows (page 368 of the bundle):

    95.1. "You felt the investigation manager had contradictions in their response, namely that it clearly stated a colleague from GXO had a conversation with an ex GXO colleague about you visiting a sunbed shop and in relation to your medical condition which you felt was a total breach of confidentiality ("Appeal Ground One");

    95.2. You allege that Mark Bolton was 'directly fabricating the truth' in respect of an investigatory meeting you attended, whereby during an adjournment, you allege that Mark raised with you rumours at site in relation to your alleged use of steroids and visiting a sunbed shop and you had evidence of this being the case ("Appeal Ground Two");

    95.3. You allege that Chris Curtis had stated to Mark Bolton and you quoted 'I had been smashing steroids in me' and Chris denied this implying he would investigate matters into these allegations as a potential breach of dignity at work, and later admitted to you that he had those conversations with Mark as a result of dramatic changes in your appearance ("Appeal Ground Three"); and

    95.4. You allege you were being denied the right to work from home and business rationale provided for declining this request was not sufficient and you had requested a specific list of tasks to support the rationale given by the business which you had not received."

96. The Claimant did not dispute these were his grounds of appeal and I considered it was important to note that at the time the failure to interview

Mr Sedlan was not advanced by Mr Granger.

97. Ms Tilsley addressed each of these grounds in her letter upholding the original grievance decision.

Appeal Ground One

97.1. She said the business could not prevent colleagues interacting outside work and that she had found no evidence: "*that private and confidential information relating directly to your medical condition was shared and therefore the Company would be unable to investigate these matters*".

97.2. She also said that she found Mr Bolton had explained to the Claimant there were rumours circulating about him and that he had used the sunbed shop as an example "*clearly advising you that the Company could not take action based on gossip and rumour...*"

Appeal Ground Two

97.3. Ms Tilsley reviewed relevant documentation and challenged Mr Bolton directly and said: "*Accounts of the conversation vary and Mark alleges that during the adjournment taken, you raised that people were taking about you using steroids and his response was that this was likened to the sunbed shop situation, and as it is gossip and rumour the business would not get involved in this or take any actions without firm evidence and then it could be pursued in accordance with Company policies."*

97.4. She also said Mr Bolton disputed that he had accused the Claimant of "banging steroids" and instead this was Mr Granger who used these words.

97.5. In coming to her conclusion Ms Tilsley said: "*Therefore as yours and Marks accounts are variable, and in the absence of any other witnesses present during this alleged exchange, I am unable to substantiate your allegation that Mark directly fabricated the truth and lied about this exchange. I find valid mitigation as to why Mark would not fully acknowledge the exact wording in your email and can see that he endeavoured to get this dealt with as quickly as possible in your interests by forwarding it to your line manager.*

Appeal Ground Three

97.6. Ms Tilsley said she found no evidence that Mr Curtis stated to Mr Bolton that the Claimant had been "smashing steroids" or any other derogatory comments.

97.7. She said: "*Chris does admit that given the concerns you had raised to him and on account of the drastic changes he did speak to Mark Bolton out of concern and to seek guidance on how best to deal with the situation.*

As a Line Manager, I find it reasonable that Chris Curtis would speak to his line manager Mark Bolton and express his concerns in relation to your health and wellbeing...I do not believe this constitutes a breach of your dignity at work..."

Appeal Ground Four

97.8. Ms Tilsley said given that there was a separate process concerning the Claimant's flexible working request she would not comment on this ground.

The Flexible Working Request

98. On 14 August 2024 the Claimant submitted a flexible working request seeking to work from home temporarily. The request referred to ongoing grievance matters and their effect on his health (page 314 of the bundle).

99. The Respondent rejected the request by letter dated 06 September concluding that the compliance manager roles required a substantial on-site presence (page 319 of the bundle).

100. Mr Curtis said:

"...*unfortunately it was simply not possible for the Compliance Manager role to be carried out remotely. The role required immediate intervention and support to drivers and agency staff on site as and when matters arose. The drivers did not have access to Teams or work devices on which to contact Mr Granger remotely - he needed to be there as a point of support and management onsite.*"

101. In this letter Mr Curtis gave the Claimant examples of key duties which required Mr Granger to be on site including:

101.1. Daily review meetings on key area with transport managers and supervisors;

101.2. Managing the VMU/Carrier Performance due to staff shortages and extremely high VOR;

101.3. Coaching, guidance and one-to-one sessions around audit expectations and supervisor understanding;

101.4. That the training and compliance manager was an operational role

which was required to be site-based including a daily review of the business's compliance position and the protection of the Respondent's operations licence; and

101.5. To support the training department which had been falling behind in its responsibilities.

102. In his evidence Mr Curtis confirmed the importance of the compliance manager role being site-based and said:

> "*At this time there was considerable compliance issues on site. This was partly due to the period when the previous compliance manager had tried to perform the role from home, which had led to poor practices and legacy issues; and the site had also failed its compliance audit and was going to fail its training audit. There was a lot of work to be done to try and rectify things.*"

103. The Claimant said that due to his poor health his GP had recommended he work from home.

104. In June 2024 the Respondent had referred the Claimant to its occupational health advice provider. In a letter dated 11 June 2024 (page 283 of the bundle) (the "June 2024 OH Report") the Respondent was advised:

"*...it is my professional opinion, he is currently fit for work as he is able to carry out his day to day activities with no significant restriction. Management may wish to consider some flexibility with regards to homeworking, to help him manage any fatigue.*"

105. I could not find any GP records in the bundle. However the Claimant frequently referred to his GP recommending he work from home in the documentary evidence. I take this as evidence of a recommendation but have given little weight to it.

106. In his oral evidence the Claimant said the Respondent had previously allowed him to work from home when he had been unwell.

107. Mr Curtis confirmed this arrangement but said this was in relation to a specific project which involved helping to introduce a new system called TARA.

108. He said none of the work that Mr Granger carried out whilst working from home was compliance work.

109. The Claimant appealed the decision to turn down his flexible working request on 09 September 2024 (page 321 of the bundle).

110. This was on the basis he could have daily review meetings and training sessions via Teams and he had an experienced and competent fleet controller who could help with the VMU/carrier performance responsibilities.

111. He said: "*As I am fully aware my role is site based however this is a temporary request and I am not requesting this as a permanent to my contact* [sic]*. I can review remotely our daily compliance position through Tacho Master, Check Master Axsend and our other platforms I use on a daily basis. I have fully* [sic] *access so this would never be an issue to monitor this and protect the Operator's Licence.*"

112. An appeal meeting was held on 25 September 2024. The Claimant's appeal was turned down by Robbie Hughes, the Respondent's Transport General Manager.

113. In his letter to the Claimant dated 10 October 2024 (page 349 of the bundle) Mr Hughes said the training and compliance manager role was an operational position that was required to be site-based that training support in light of a recent audit was needed on site to allow all trainers to be assigned training activities.

114. He said:

"*In summary on a number of points you have stated you're aware your role is site based and that there would be a detrimental effect on the business if your role is not fully carried out, you also highlight in our meeting this was a temporary change whilst you have outstanding grievance which needed resolving before you wanted to return.*

I am under the impression that this has been resolved or is near to resolution therefore the requirement to work from home is no longer necessary and taking into consideration the above my decision is to uphold the outcome of the flexible working request."

115. Under cross examination the Claimant accepted that working with colleagues face to face and having one-to-one meetings was preferable to working with them remotely.

<u>The Bad Language Issue</u>

116. This related to a comment the Claimant alleged Mr Curtis had said to him namely that one minute Mr Granger was a wizard and the next minute he was a wanker.

117. Mr Curtis confirmed that he had used words to this effect.

118. He said:

"*At some point early on in Mr Granger and my working relationship we were talking about the pressures of the job. I made a comment along the of lines of "in this job, you're either a zero or a hero, as my old boss used to say a wanker or a wizard." Mr Granger laughed about this and agreed with the point.*"

119. Mr Granger said the comment was made to when he was given the role of compliance manager which means the conversation happened sometime between September and November 2022 and this accords with Mr Curtis's version of events.

120. The Claimant did not make a complaint at the time and the Bad Language Issue only came up again following Mr Granger's recourse to the ET.

121. I find the words "wanker" and "wizard" were used by Mr Curtis. I also find that the Claimant took them out of context. Mr Curtis's evidence was highly credible and I accept he was having a conversation about how difficult it was sometimes to be a compliance manager in a business.

Resignation

122. The Claimant resigned with immediate effect on 10 January 2025 by email (page 435 of the bundle).

123. In his resignation letter, claim form and in oral evidence Mr Granger said in light of everything that had happened to him he had lost trust and confidence in the Respondent and that he could not remain employed because of the way he had been treated.

124. Mr Granger did not say that any of the issues (identified above) were the "last straw" for him causing him to resign.

125. The main thrust of his complaint was the way in which the Respondent dealt with the 2024 Grievance.

Key Findings of Fact

126. In relation to each of the allegations made against the Respondent I make the following findings:

The 2022 Grievance

127. The Claimant claimed he did not receive a grievance outcome letter in respect of his bullying and harassment grievance he had made.

128. The documentary evidence at page 445 of the bundle clearly shows Mr Granger was sent a grievance outcome letter.

128.1. The Claimant was plainly mistaken in his allegation; and

128.2. This incident cannot be relied upon by the Claimant as representing a breach by the Respondent of the implied term of mutual trust and confidence.

The Company Car Entitlement Issue

129. The Claimant claimed that he did not receive a company car despite being told by the Respondent that he was entitled to one.

129.1. I find the Claimant was twice told by the Respondent in its documentation that he was entitled to a company car when he took on the compliance manager role.

129.2. I find that this was a mistake made by the Respondent and in coming to this conclusion Mr Curtis' evidence was candid and compelling - indeed he said when he "docusigned" the contract he missed the fact that the wrong box had been ticked.

129.3. Mr Curtis accepted mistakes had been made and provided a credible explanation for them by confirming that no one else on the particular contract had a company car and that the Claimant did not raise this as issue with him again following the letter of 16 January 2023.

129.4. Although this was an unfortunate incident, the Claimant did not pursue the issue in 2023 and I therefore conclude he considered the matter was resolved until he issued Employment Tribunal ("ET") proceedings.

129.5. Whilst I accept it could have been disappointing for Mr Granger and could have subjectively undermined the relationship of trust and confidence between the parties it does not represent a breach by the Respondent of the implied term of mutual trust and confidence.

The Salary Issue

130. The Claimant said he had been told he would receive a salary of £45,000 but in fact was paid £42,000 a year when he was made the permanent transport manager.

130.1. I have already set out my findings in respect of the Potential BOC Complaint and the NEBOSH Emails.

130.2. I find the Claimant was told, as shown in the AM Text that his new salary would be £45,000. I note this was a text by an administrator

who was unlikely to have bound the Respondent.

130.3. This was a mistake which was corrected by the Respondent in its contractual documentation and in the Form

130.4. I accept Mr Curtis's evidence that Mr Granger did not raise this issue again until his resignation.

130.5. I find that at the time the Claimant accepted £42,000 a year was his correct salary because he did not re-raise the issue until he set out his concerns in his resignation letter that "*Nothing was ever done about this so in the end I just had to deal with it.*"

130.6. This incident may have subjectively undermined Mr Granger's confidence in his employer but objectively does not represent a breach by the Respondent of the implied term of mutual trust and confidence.

The 2024 Grievance

131. This centered on the Claimant's claim that the Respondent failed to interview a key witness, the nature of the allegations made against him and that he had been lied to by Mr Curtis.

131.1. I have already found that Mr Sedlan was a witness to two conversations – the first where Mr Granger said he was prepared to undertake a drugs test and the second where he told Mr Curtis that the Claimant was upset by the allegations Mr Bolton raised with him.

131.2. Neither of these two conversations is evidence that the grievance process was so tainted by the failure to interview Mr Sedlan as to amount to a breach of the implied term of mutual trust and confidence.

131.3. The Respondent could have put more effort into speaking to Mr Sedlan

131.4. However in the context of what Sedlan could attest to and that his evidence did not go the heart of the issues, I do not find it undermined the relationship of trust and confidence to the extent necessary for a successful complaint of constructive dismissal.

131.5. I also consider in the context of Mr Flynn's decision and Ms Tilsley's letter turning down the appeal that Mr Sedlan's evidence would not have made any difference to either outcome.

131.6. I have found that Mr Curtis raised the steroid issue with the health

and safety team and Mr Bolton.

131.7. I also found Mr Granger genuinely thought he had been lied to by Mr Curtis and that he was the subject of damaging rumours in the workplace which impacted his mental health.

131.8. However despite Mr Granger's personal feelings, he was not lied to by Mr Curtis and was mistaken in his assumptions.

131.9. From the documentary evidence along with the oral evidence of Mr Flynn and Mr Curtis I find that in all material respects the Respondent supported the Claimant through the grievance process.

131.10. Notwithstanding that Mr Sedlan was not interviewed, overall the Respondent thoroughly and properly conducted the grievance investigation, meetings with other witnesses and the Claimant, reported the grievance outcome to him and conducted the thorough appeal.

131.11. In the investigation Mr Flynn identified the issues and came to his conclusions based on the evidence and representations made by the Claimant.

131.12. In particular Mr Flynn accepted that Mr Curtis had mentioned steroid use to Mr Granger but this was out of concern and he wanted to ensure the Claimant was fit to work.

131.13. After hearing Mr Curtis's evidence I came to the same conclusion – Mr Curtis was genuinely concerned about a work colleague he respected.

131.14. Ms Tilsley's outcome letter demonstrated a very careful analysis of Mr Granger's grievance. I come to this conclusion based on the detailed and measured work Ms Tilsley undertook to identify the grounds of the appeal and then come to her conclusions including setting out her reasons for doing so.

131.15. There was no evidence from Mr Flynn or Ms Tilsley that the Respondent was predisposed to preferring the evidence of Mr Bolton over that of the Claimant.

131.16. There was no evidence that in dealing with this grievance the Respondent was manipulating the process to achieve a certain result or its own ends.

<u>The Flexible Working Request</u>

132. The Claimant said the rejection of his request to work from home temporarily was a form of "victimisation" because he had raised a grievance and claimed his GP had advised working from home.

132.1. The Respondent had allowed Mr Granger to work from home when he was unwell but fit to work.

132.2. At this time he was working on a specific project (TARA) which was not part of the compliance manager's role.

132.3. The compliance manager role required that the post holder work on site.

132.4. The reasons for this were the need for daily meetings on site; managing VMU/carrier performance; in person coaching and guidance and training and daily reviews of the business's compliance position and the protection of its operations licence.

132.5. Mr Curtis's evidence, including in cross examination, confirming the importance of the compliance manager role being site-based was compelling in this respect and particularly so in light of his candid admission that there were considerable compliance issues on site which he considered were partly due to the fact that a previous compliance manager had tried to perform the role from home.

132.6. The Claimant appealed this decision on the basis he could carry out his responsibilities remotely and his fleet manager could undertake on-site tasks.

132.7. I find Mr Curtis's evidence that drivers and agency staff would not be able to contact the Claimant remotely compelling.

132.8. The Respondent turned down the appeal explaining that the grievance process was coming to an end, Mr Granger knew his role was site-based and it considered working from would not be in the interests of the business.

132.9. The Respondent had the discretion to turn down Mr Granger's request and it exercised this discretion reasonably in referring to its in business reasons for its decision. No doubt the Claimant was frustrated and perturbed by the decision.

132.10. There was no evidence that in dealing with the Claimant's request the Respondent was manipulating the process.

132.11. However the business reasons the Respondent gave for turning down the request were reasonable in the circumstances and I find this was not objectively a breach of the implied term of mutual trust

and confidence and consequently not a fundamental breach of the Claimant's contract of employment.

The Bad Language Issue

133. The Claimant considered the "wizard then a wanker" phrase was directed at him by Mr Curtis and this made him upset.

133.1. Mr Granger was mistaken in thinking the bad language comment was directed at him. I prefer Mr Curtis's version of events that the Claimant took the comment out of context for the purposes of his claim.

133.2. This conversation took place sometime between September and November 2022.

133.3. The words "wanker" and "wizard" were used by Mr Curtis but the Claimant took them out of context.

133.4. The bad language was not a breach of contract or an act which destroyed the relationship of trust and confidence between the parties.

The Relevant Law and Legal Principles

134. Constructive dismissal is not a term used in the ERA 1996. However s95(1)(c) ERA 1996 provides:

(1) *For the purposes of this Part an employee is dismissed by his employee 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."

135. In order to claim constructive dismissal the employee must establish:

135.1. There was a fundamental breach of contract on the part of the employer that repudiated the contract of employment;

135.2. The employer's breach caused the employee to resign; and

135.3. The employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.

136. This means that there must be a causal link between the employer's fundamental breach of contract and the employee's resignation, the employee must have resigned because of the employer's breach and not

for some other reason.

137. This is a question of fact for the ET to determine taking into account all relevant considerations.

138. In constructive dismissal cases the terms "fundamental breach" and "repudiatory breach" are often used interchangeably. Both these terms describe a breach of contract by the employer of sufficient gravity so as to entitle the employee to treat himself or herself as dismissed (see *Western Excavating (ECC) Limited v Sharp [1978] ICR 221 CA.*

139. The breach of contract may consist of a breach of the implied term of trust and confidence. The Claimant's case is relying on this type of breach.

140. The leading case on breach of this implied term is *Malik v Bank of Credit and Commerce International SA [1997] ICR 606 HL* ("Malik") which held employers will not:

"*without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.*" (the "Malik Test")

141. In matters involving allegations of a breach of the implied term of trust and confidence the ET'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.*" (*See Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347* ("Woods")).

142. Woods which was an Employment Appeal Tribunal ("EAT") case also held that:

"*Any breach of that implied term* [of mutual trust and confidence] *is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract....*"

143. In *Lewis v. Motorworld Garages Limited [1986] ICR 157* ("Lewis") the Court of Appeal said it was well established that repudiatory conduct could consist of a series of acts or incidents, some of which could be quite trivial but which cumulatively amount to a breach of the implied term of mutual trust and confidence.

144. In applying Malik I have to decide:

144.1. Whether there was reasonable and proper cause for the Respondent's conduct; and

144.2. If not, whether its conduct was "*calculated or likely to destroy or seriously damage trust and confidence?*"

145. In respect of the latter question a breach of this fundamental term will not occur simply because the employee subjectively feels that such a breach has occurred, no matter how genuinely that view is held. The legal test entails looking at the circumstances objectively, that is, from the perspective of a reasonable person in the claimant's position (see *Tullett Prebon plc and ors v BGC Brokers LP and ors* 2011 IRLR 420, CA. ("Tullett Prebon").

146. Conduct which has an adverse effect on trust and mutual confidence will not breach the implied term unless in applying the Malik Test it is likely to destroy or seriously damage the relationship of trust and confidence.

147. What I must determine is whether the Respondent's conduct was sufficiently serious for Mr Granger to be entitled to terminate the contract of employment without notice.

148. Acting in an unreasonable manner is not sufficient to meet this test. The employer's conduct has to be calculated or likely to at least damage the relationship of trust and confidence.

149. In the case of *Frenkel Topping Limited v King* EAT 106/15 ("Frenkel") the EAT observed that this presents a high hurdle. In the words of Mr Justice Langstaff (then President of the EAT):

"*We would emphasise that this is a demanding test. It has been held...that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis.*

The purpose of such a term was identified by Lord Steyn in Malik as being: "…apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited." Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test…Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach."

Discussion and Conclusions

150. The Claimant claims the Respondent acted in fundamental breach of his employment contract in respect of the implied term relating to mutual trust and confidence.

151. In determining each of the 2022 Grievance, the. Company Car Entitlement Issue, the Salary Issue, the 2024 Grievance, the Flexible

Working Request and the Bad Language Issue (together the "Issues"), I took account of the Malik Test. I also reminded myself that whether there has been a fundamental breach of the implied term of mutual trust and confidence in an employment contract, I had to decide on the balance of probability whether an employer, without reasonable and proper cause, behaved in a way that was either calculated or likely to destroy or seriously damage the trust and confidence between the employee and the employer.

152. In coming to my conclusions, I also reminded myself that the Malik Test is an objective test, meaning that due to the conduct of the Respondent was the Claimant reasonably entitled to conclude his employer had breached the implied term of mutual trust and confidence.

153. I also applied the principles in Tullett Prebon that a breach of this fundamental term will not occur simply because the employee subjectively feels that such a breach had happened.

154. I accepted the Claimant genuinely felt upset and/or aggrieved at what he subjectively thought was the Respondent's poor behaviour, but the case law is clear and that even if I had found the Respondent's conduct was unreasonable, this is not sufficient to establish a repudiatory breach of the employment contract.

155. Therefore in applying Tullett Prebon and Frenkel (the latter reminding ETs that the Malik Test is stringent and demanding and simply acting in an unreasonable manner is not sufficient), I have found the Claimant's genuine concerns do not objectively satisfy the Malik Test.

The 2022 Grievance

156. I accept the Claimant thought he did not receive an outcome letter but the documentary evidence showed he did.

157. This incident cannot be relied upon by the Claimant as representing a breach by the Respondent of the implied term of mutual trust and confidence.

The Company Car Entitlement Issue

158. Although this was an unfortunate mistake by the Respondent, was disappointing for Mr Granger and could have subjectively undermined the relationship of trust and confidence, there was an insufficient basis on which to conclude objectively that the Respondent breached the implied term of trust and confidence.

159. I considered whether the Respondent's conduct was likely to seriously damage the Claimant's trust and confidence in his employer but determined that the high hurdle provided by the Malik Test was not met by the evidence

and whilst there was compelling evidence of inefficiency this did not objectively mean the Claimant was entitled to treat the conduct of the Respondent as a breach of the implied term of trust and confidence.

160. The evidence did not show the Respondent's conduct was such that it was calculated to destroy or seriously damage the implied term of trust and confidence. I find that there was no active plan or premeditation by the Respondent in relation to this issue – it was a mistake albeit repeated.

161. Furthermore the evidence did not show that the Respondent's conduct was objectively likely to destroy or seriously damage the implied term of trust and confidence.

The Salary Issue

162. This was another unfortunate mistake by the Respondent. However it was corrected.

163. At the time the Claimant accepted £42,000 a year was his correct salary and did not raise the matter again until his resignation.

164. The Respondent's conduct may have subjectively undermined Mr Granger' confidence in his employer but objectively did not satisfy the Malik Test on the same basis as described in the Company Car Entitlement Issue (above).

The 2024 Grievance

165. This was the issue which took up most time at the hearing. It was plain the Claimant was unhappy during the process and with the outcome.

166. I took into account his distress because he thought his honesty and integrity had been undermined particularly in relation to the steroids and sunbed allegations.

167. However in applying the principles in the case law to the evidence I heard and read and reviewing my findings of fact, I have determined there is an insufficient basis to objectively conclude the Respondent breached the implied term of trust and confidence.

168. As I have described above, the evidence did not show the Respondent's conduct was calculated or likely to destroy or seriously damage the implied term of trust and confidence.

169. My rationale for reaching this conclusion is as follows:

169.1. A breach of the term of mutual trust and confidence will not occur because an employee feels that such a breach has happened – no

matter how genuinely such a view is held;

169.2. The legal test entails considering all the circumstances objectively, i.e. from the perspective of a reasonable person in the Claimant's position;

169.3. Frenkel shows the high hurdle of the Malik Test - it is a demanding test, the word qualifying "damage" is "seriously" and a balance has to be struck between an employer's interest in managing its business and the employee's interest in not being unfairly and improperly exploited.

169.4. I also reminded myself that the Malik Test is clear that I must focus on the Respondent's conduct in relation to a reasonable employee rather than the subjective feelings of Mr Granger.

169.5. If I take the Claimant's case at its highest, I do not find the conduct of the Respondent provides sufficient grounds to objectively conclude that the Malik Test is met and therefore I do not find that the implied term of mutual trust and confidence was breached by the Respondent.

The Flexible Working Request

170. The Claimant was plainly aggrieved after his request was turned down which from a subjective perspective more likely than not undermined his trust and confidence in his employer.

171. The June 2024 OH Report suggested flexibility but this was limited to advising the management team that it may wish to consider *"some flexibility with regards to homeworking".*

172. This was not a strong recommendation and did not go as far as to suggest that Mr Granger should be allowed to work from home continuously for any length of time.

173. There was no evidence to link Mr Granger's 2024 Grievance with the decision to refuse his flexible working request or that the Claimant was being "victimised".

174. The evidence did not show the Respondent's conduct was calculated or likely to destroy or seriously damage the implied term of trust and confidence.

175. I reminded myself of the principles in the case law and applied these to the evidence and reviewed my findings of fact.

176. On this basis I have concluded it is not possible to conclude objectively that the Respondent breached the implied term of mutual trust and

confidence and it therefore follows there was no fundamental breach of the Claimant's contract of employment by his employer.

177. My rationale for reaching this conclusion is as follows:

177.1. Although the Respondent had allowed Mr Granger to work from home when he was unwell this was a specific project (TARA) which was not part of the compliance manager's role;

177.2. It was clear the compliance manager role required that the post holder work on site and the Claimant knew this;

177.3. The reasons for this were the need for daily meetings on site; managing VMU/carrier performance; in person coaching and guidance and training and daily reviews of the business's compliance position and the protection of its operations licence;

177.4. The Claimant acknowledged that working face to face was preferable to managing staff remotely;

177.5. Mr Curtis's evidence was candid and compelling; and

177.6. The Respondent had logical business reasons for turning down the request.

<u>The Bad Language Issue</u>

178. The Claimant said he was upset by the comment and I have found he was mistaken in thinking Mr Curtis directed it at him personally and he had taken the words out of context.

178.1. In coming to my conclusion on this issue I have applied the principles in Tullett Prebon and Frenkel. Even ignoring the Claimant's misunderstanding, the use of the bad language does not meet the stringent demands of the Malik Test.

178.2. The bad language was not a breach of contract or an act which destroyed the relationship of trust and confidence between the parties.

<u>Considering the Issues Cumulatively</u>

179. I then went on to consider whether cumulatively the evidence in respect of the Issues was capable of being construed as a breach of the implied term of trust and confidence by the Respondent.

180. I asked myself whether the combined effect of the Respondent's conduct was objectively capable of meeting the Malik Test.

181. I also reminded myself of the test in the case of Woods and asked whether the Respondent's conduct as a whole was such that its effect judged reasonably and sensibly meant that the Claimant could not have been expected to put up with it.

182. My answer to these questions based on my findings is objectively no.

183. Although there were flaws in the Respondent's handling of some of the Issues, (specifically the Company Car Entitlement Issue and the Salary Issue), and taking into account the reasoning in the cases of Lewis and Woods, I do not find that objectively the Respondent's conduct overall met the threshold for a repudiatory breach of contract by way of a breach of the implied term of mutual trust and confidence.

184. Overall the Respondent's conduct did not reach the level of serious damage or destruction of the relationship of trust and confidence.

185. The Claimant was not entitled to treat his employment contract as being at an end and to regard himself as being constructively dismissed.

186. My conclusion is that Mr Granger was upset and frustrated, particularly in relation to the 2024 Grievance outcome and the rejection of his Flexible Working Request, and this led to his decision to resign.

Final Conclusions

187. I have found there was no repudiatory or fundamental breach of the implied term of mutual trust and confidence either on the basis of any individual finding or on a cumulative assessment of the Issues.

188. It therefore follows that the Claimant resigned because he was upset and frustrated and this was not in response to any breach by the Respondent.

189. For all these reasons my decision is that the Claimant's resignation did not constitute a dismissal by the Respondent.

190. He was not constructively dismissed by the Respondent pursuant to s95(1)(c) of the ERA 1996.

191. However if I am wrong and there was a fundamental breach of the implied term of mutual trust and confidence and the Claimant did resign as a result, I have considered whether Mr Granger the following affirmed the employment contract before resigning.

192. The Claimant resigned without notice on 10 January 2025. Taking the Claimant's case at its highest, the last of the acts which he complained of

was the appeal outcome letter dated 30 October 2024 in respect of the 2024 Grievance.

193. This means Mr Granger waited more than two months before resigning. In constructive dismissal cases delay can be fatal to a claim.

194. Where an employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract and thereby lost the right to claim constructive dismissal (see *Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA)*.

195. The issue of affirmation is essentially one of conduct, not simply passage of time. In the case of *Chindove v William Morrison Supermarkets plc EAT 0201/13*, Mr Justice Langstaff, then President of the EAT, warned against looking at the mere passage of time in isolation when determining whether an employee has lost the right to resign and claim constructive dismissal.

196. He said what matters is whether, in all the circumstances, the employee's conduct has shown an intention to continue in employment rather than resign and the employee's own situation should be considered as part of the circumstances.

197. Another important factor for consideration is whether the employee was at work in the interim such that he or she could be seen as complying with the contract in a way that was inconsistent with a decision to terminate it. Where an employee is on sick leave at the relevant time, it is not so easy to infer that he or she had decided not to exercise his or her right to resign.

198. According to an occupational health report dated 03 December 2024 (at page 377 of the bundle) the Claimant had been off work since 12 June 2024 because of a mental health condition and he was unfit to return to work.

199. In cross examination the Claimant said in the time between the appeal outcome letter and his resignation he was off sick but he did not resign because of his mental health issues.

200. He said he made up his mind to resign over a period of time and that he did not want to make a hasty decision.

201. Mr Granger in response to a question as to what he considered was the "last straw" said:

"*It was everything together, that's how I feel* [it was] *all the issues together.*"

202. Considering the facts of Mr Granger's case, although he was unwell during the relevant time and not working, he freely acknowledged he took his time to reach the decision to resign and there was no "last straw" event

triggering his resignation.

203. If the Respondent had committed a repudiatory breach of contract (which I have not found) Mr Granger waited too long to resign.

204. My conclusion in all the circumstances and considering the practical implications that a decision to resign would have for Mr Granger is that by his delay he affirmed his contract of employment.

205. As I have found there was no dismissal, I do not need to consider the question of fairness.

206. The Claimant's claim for unfair constructive dismissal pursuant to s95(1)(c) ERA 1996 fails and is dismissed.

Employment Judge
Elizabeth Gibson
17 October 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
05 November 2026
FOR THE TRIBUNAL OFFICE