Case No: 2301251/2026

EMPLOYMENT TRIBUNALS

Claimant: H Cooper

Respondent: Manhatten FM Limited

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The claims of constructive unfair dismissal are struck out.

REASONS

1. Section 108(1) of the Employment Rights Act 1996 ('the 1996 Act') provides that, in order to make a claim of unfair dismissal, an employee must have a continuous period of employment of at least two years prior to the effective date of termination.

2. The Claimant was employed 16 April 2026 and her effective date of termination was 20 June 2026. She did not have the necessary two years of continuous employment to allow her to make a claim.

3. The Claimant accepts that she was not employed for two years. She opposes the proposed strike out of the unfair dismissal claim, because "the dismissal arose from serious health and safety concerns" and "the facts need fuller consideration before any decision is made about the unfair dismissal complaint."

4. However this does not enable me to set aside the requirement for two years continuous service to allow the Claimant to make a claim of ordinary unfair dismissal.

5. Although the Claimant does not put forward any explicit claim of automatic unfair dismissal on grounds of health and safety, I have nevertheless considered the possibility that the claim might be framed in that way.

6. Section 100 of the 1996 Act reads, so far as is relevant:

"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

…

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety…"

7. This is the only applicable part of section 100 of the Act. This is because the Claimant was not carrying out health and safety activities (section 100(1)(a)), was not a health and safety representative (section 100(1)(b)), did not leave or propose to leave the workplace (section 100(1)(d)) or taking imminent steps to protect herself or others from danger (section 100(1)(e)).

8. I remind myself that:

(a) There can be no claim of any kind of unfair dismissal (ordinary or automatic) unless there is a dismissal.

(b) A dismissal can include a situation where "the employee terminates the contract under which he is employed (with or without notice) in circumstances which he is entitled to terminate it without notice by reason of the employer's conduct": section 95(1)(c) of the 1996 Act.

(c) Thos circumstances include a repudiatory breach on the part of the employer of the implied mutual obligation of trust and confidence: Morrow v Safeway Stores plc [2002] IRLR 9.

(d) A claim of automatic unfair dismissal includes a case where the dismissal was a constructive dismissal arising from a repudiatory breach of the mutual duty of trust and confidence: Goldstein v Herve [2024] IRLR 579.

9. I have accordingly looked at the claim to see if the essential elements of section 100(1)(c) of the 1996 Act are met. My conclusion are as follows:

10. I have assumed that there was no health and safety representative (as none is mentioned by either the Claimant in the ET1 or Respondent in the ET3) or, in the alternative, that the immediacy of he situation (the property being due to be cleaned within hours) meant it was impractical to communicate concerns via a health and safety representative.

11. First, it is clear that the Claimant was bringing circumstances to her employers attention that she reasonably believed were harmful or potentially harmful to health and safety (the presence of blood and used drug paraphernalia at the property, the alleged absence of PPE to clean it up).

12. Second, it is clear that this communication was reasonable (telephone calls to her managers).

13. Third, it is clear thar the harm or potential harm was connected to her work (it was on the property she was employed to clean).

14. Fourth, it is clear that that the repudiatory breach identified as the reason or principal reason for dismissal was not the fact that the Claimant had raised her concerns. It was instead the acts of the Respondent in placing the Claimant in the harmful or potentially harmful situation in the first place: see the ET1 from which states "I was very distressed and anxious about my health. I felt unsafe and felt that the Respondent had failed to protect me. I consider that the Respondent breached its duty of care to provide a safe system of work, suitable equipment, and adequate training. I resigned on 20 June 2026 because I no longer felt able to continue working in those conditions" (emphasis added).

15. The protection under section 100(1)(c) of the Act is designed to protect employees and workers from being dismissed because they have raised safety concerns. As the Claimant, on her own account, was not dismissed for that reason (it is not the repudiatory breach she complains of) section 100(1)(c) does not apply.

16. This judgment does not affect the other claims raised by the Respondent. From the ET1, these appear to be:
    (a) Breach of contract, or in the alternative unauthorised deductions from wages contrary to section 13 of the 1996 Act, in respect of notice pay.
    (b) Breach of contract, or in the alternative unauthorised deductions from wages contrary to section 13 of the 1996 Act, in respect of holiday pay.
    (c) Being subjected to a detriment related to health and safety contrary to section 44 of the 1996 Act.

Employment Judge Atkins
05 August 2026

Note
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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