



EMPLOYMENT TRIBUNALS

Claimant: Mr Paul Swan

Respondents: Berendsen Hospitality Limited, t/a Elis

Heard at: Croydon **On:** 20 November 2019

Before: Employment Judge Jones QC

Representation:

Claimant: In person

Respondent: Ms Katya Hosking of Counsel

JUDGMENT

1. The Claimant was constructively dismissed.
2. The Claimant's dismissal was unfair.

REASONS

Claims and Issues

1. The Claimant alleges that he has been constructively unfairly dismissed.
2. The issues for determination are:

- (1) Did the Respondent commit a repudiatory breach of contract; and if it did
- (2) Did the Claimant resign in response to that breach; and if he did
- (3) Was his constructive dismissal otherwise unfair within the meaning of **ERA 1996, s. 98(4)**?

Witnesses and Bundles

3. The Tribunal heard from the following witnesses:
 1. The Claimant;
 2. Mrs Joanne Swan (the Claimant's wife);
 3. Ms Tina Ahwieh, formerly an HR Manager employed by the Respondent;
 4. Mr Edward Smith, formerly General Manager employed by the Respondent; and
 5. Mr Emmanuel Ramiere de Fortanier, the current General Manager employed by the Respondent.
4. In addition, the Tribunal read witness statements from:
 1. Mr Samuel Appiah;
 2. Mr Paul Barry; and
 3. Mr Richard Oliver.
5. The Tribunal had before it a joint bundle of 333 pages.

Findings of Fact

6. The Claimant commenced employment with the Respondent on 29 March 2004. He was, latterly, a transport compliance co-ordinator. The Respondent is a provider of support services offering textile, hygiene and facility services. During the Claimant's time with the Respondent it has been known by a number of names: Sunlight, Berendsen and, ultimately, Elis. Where the Respondent is referred to by name below the Tribunal has used "Elis" for the sake of consistency.
7. In or about 2013, the Claimant was working at one of three establishments that the Respondent operates in Merton. He was working, specifically, at "Merton 2" and reporting to a Transport Manager called Gary Bowen. By a letter dated 21 June 2013, the Claimant requested a transfer to another depot, Merton 3, as he no longer wanted to report to Mr Bowen who he described as "a bully" who had made it clear that he was no longer wanted in Merton 2.
8. In 2014 the Claimant had an extended period of sickness absence. He was absent from 3 March to 16 November 2014. The reason for absence was "anxiety and depression". On 14 July 2014, the Claimant's GP wrote to the Respondent identifying what the Claimant had said were his "main stressors". They were "loss of several members of his family, his parents and daughter over a short space of time" but also "work related stress". The particular source of that work-related stress is not expressly identified in the medical documents. The Claimant's

evidence, which the Respondent is not able to gainsay, is that his relationship with Mr Bowen was the stressor. The Tribunal was shown a note of a meeting dated 22 September 2014 in which it was suggested to the Claimant that he had said to a Ms Natalie Hill, an HR Advisor, that he had not wanted to come back to work in a “supervisory position” as he had “found it to be too stressful”. It was suggested to the Claimant that it was his supervisory position and not his relationship with Mr Bowen that was the problem. The Claimant denied that and, indeed, he had done so in the meeting itself. The minute shows that he was asked to confirm that he had told Ms Hill that he had not wanted to come back to work in a supervisory position. The minutes record him saying:

“No at the start when I was off sick after about 4 days I wanted to come back but was told that I was not allowed back because I was on medication. I thought it was unfair that I was not allowed back to work.”

9. In or about June 2015, the Claimant “blew the whistle” about certain practices which concerned him. There was a meeting on 9 June 2015 with the Respondent’s Logistics Manager, UK Flat Linen, Logistics Supervisor and HR Business Partner and the minute of that meeting is the best record of the issues raised. The minute records the Claimant describing Mr Bowen’s leadership as “bullying techniques”. It also suggests that Mr Bowen failed or refused to take account of the Claimant’s specific concerns:

“Paul states that Gary Bowen started saying ‘I will do what I like – I am the manager – if you don’t like it, the door is over there’ when Paul challenged things that he thought were illegal.”

10. When the Claimant discovered that it appeared that the investigation conducted by the Respondent was going to reject his concerns, he made reports to the Wimbledon Guardian newspaper and the Driver & Vehicle Standards Agency. In consequence, the Claimant was contacted, on 14 September 2015, by the Respondent’s Managing Director, Mr Finch, who wanted to meet him. At this point, the Claimant was again absent from work with anxiety and depression. He ultimately returned to work in October 2015.
11. There was a concern that the Claimant might be subjected to retaliatory treatment as a result of having blown the whistle. An email from Deborah Corbett (later Gifford) who is part of the Respondent’s HR function, records steps taken to meet this concern. It shows that the Claimant did not want to report to Mr Bowen. Instead he was to move to Merton 1 and report to Mr Ricky Oliver, who was the Transport Manager there. There is also discussion of the possibility of the Claimant taking up a “transport compliance role across all 3 Merton sites”. That appears to be a reference to the Transport Compliance Co-ordinator role to which the Claimant was subsequently appointed. The email goes on to say:

“Finally, we met all 3 [Transport Managers] together; [Mr Bowen], [Mr Oliver] and Tom Bush, Stuart led this meeting highlighting to the TMs the standard of professionalism he expected in support of [the Claimant] returning to work, the role they would need to adopt in ensuring no discriminatory comments were made to [the Claimant] and supporting the decision for [the Claimant] to return, stating this not a HR decision, it is a business decision and right for the individual.”

12. The Claimant’s evidence is that on his return Mr Oliver was with him constantly and, if he could not be, the Claimant was in the company of a colleague called Sam. There was a dispute between the parties as to whether this arrangement was better described as having Mr Oliver

as a “bodyguard” or as a shadowing arrangement. Nothing turns on that dispute. However the arrangement is described, it is clear that the Respondent had, so to speak, put the Claimant under Mr Oliver’s wing and that a decision had been taken to avoid having the Claimant report to Mr Bowen.

13. In or around February 2016, Mr Edward Smith was appointed to be General Manager of Merton. The transport managers reported “externally” to a regional manager and “internally” to Mr Smith. Mr Smith says that, at about that time, it was proposed that the Claimant should take on the Transport Compliance Manager role covering all three Merton operations. Even though his responsibilities would now be wider than Merton 1, it was anticipated that the Claimant would still report only to Mr Oliver. Mr Smith was, according to his statement, “aware ... there had been an agreement that [the Claimant] would not report in to [Mr Bowen]”. He understood that that was because the Claimant had “implicated [Mr Bowen] in the whistleblowing incident”.
14. Mr Oliver was subsequently made redundant. His role was to be taken on by Mr Bowen. This meant that there was a risk that the Claimant might again be reporting to Mr Bowen. In the light of this new development, the Claimant raised a grievance. There was a grievance hearing on 13 January 2017. The grievance was determined by the Respondent’s National Transport Manager, Mr Jason Dixon. His determination was set out in a letter dated 7 February 2017. The issue relating to reporting lines was formulated as follows: “that [the Claimant had] previously been given assurances and a subsequent role to ensure that [he did] not directly report to Mr Gary Bowen and that [he] felt that might be at risk”. Mr Dixon decided:

“There does appear to be sufficient electronic communication based evidence to support this. Recent alterations to the Merton transport operation do seem to have made the reversal of this a distinct possibility. Although this appears to be a genuine mistake with no malicious intent, we [Elis] should honour the previous agreement.”

As a result of the finding, the Claimant was asked to report to Mr Bush, the transport manager for Merton 3. Mr Smith was aware of the grievance and its outcome.

15. It seems that Mr Bush was then made redundant. A new transport manager, Mr Pelan, was appointed to manage Merton 1 and 2. At this point, the parties’ respective accounts diverge. According to Mr Smith, the Claimant reported to Mr Pelan. According, to the Claimant, Mr Smith said that it would not be sensible for him to support to both Mr Bowen and Mr Pelan and that he should report, instead, directly to him. I prefer the Claimant’s recollection. That is principally because the question of to whom he was to report was an issue of great importance to him and he is therefore more likely to have a specific recollection of what was said to him on the subject. It would also have made sense for the reporting line to be to Mr Smith since the alternative was for Mr Bowen to be at least one of the Claimant’s line managers and, as Mr Smith was aware, there was an agreement that that should not happen. This finding of fact has a further significance: in respect of events in 2018, to which I turn shortly, Mr Smith has said it would not have been possible for the Claimant to report directly to him because he would not have had had the time necessary to deal with the consequent management responsibilities. That suggestion is obviously unsustainable if he had, in fact, been the Claimant’s line manager for a period.
16. Mr Pelan was himself then moved on in May 2018. The Claimant believes that this was as a result of his having blown the whistle about Mr Pelan having, allegedly, required a supervisor

to work hours beyond a 12 hour shift. As a result of Mr Pelan's departure, Mr Bowen took on responsibility of all three Merton sites. Mr Smith's evidence is that he then approached the Claimant to ask him if he would have a problem "reporting in to" Mr Bowen. He told the tribunal that the Claimant said that he would not and that Mr Bowen had been "fine lately". I had difficulty accepting this evidence at face value. The Claimant's objection to reporting to Mr Bowen was long-standing and had been the subject of a specific grievance only a year earlier. The Claimant says that his position was that he had no problem working "with" Mr Bowen but did have a problem working for him. In other words, he was happy to have Mr Bowen as a colleague but not as a line manager. That, of course, would be consistent with the existing arrangements.

17. Mr Smith says that he raised the prospect of the Claimant reporting to Mr Bowen with Andrea Richardson who worked in HR. In answer to questions from the Claimant, Mr Smith said that Andrea's "concern" was that the Claimant should agree and that he should not be forced to do it. It does not seem that there was any independent effort made by Ms Richardson to check what the Claimant's view was.
18. Mr Smith's witness evidence was that thereafter the Claimant reported to Mr Bowen. The Claimant denies that he did so. Mr Bowen did not give evidence and there is no documentary material in the bundle which would evidence the change either directly or indirectly. There is, for instance, no letter or email recording a change in reporting line. Nor are there records which show, for instance, Mr Bowen appraising or supervising the Claimant or the Claimant corresponding with Mr Bowen in a manner which is suggestive of direct subordination. On a balance of probabilities, I find that there was no change in reporting line and that the Claimant's understanding was that he continued to report to Mr Smith. Mr Smith told me that that would be inconsistent with his preference for a "regimented structure" and that he would not have had the capacity to line manage the Claimant. However, I have already found as fact that that was what he was doing before May 2018. In her final submissions, Ms Hosking, for the Respondent, accepted that the Respondent could not clearly establish on the evidence that the Claimant understood in May 2018 that he was to be Mr Bowen's direct report.
19. In September 2018, Mr Smith moved to another role and was replaced by Mr Ramiere de Fortanier.
20. In February 2019, the Claimant raised a grievance. The grievance did not expressly concern Mr Bowen. It was instead concerned with four matters, summarised in a letter prepared by Ms Ahwieh on 1 February 2019 as: (1) a promised pay rise; (2) an increase in his workload; (3) Using his personal phone for work related matters; and (4) Paying for parking through his phone with no receipt.
21. Ms Ahwieh met with the Claimant on 8 February 2019 in order to investigate the grievance. The issue of a pay rise appears to have been linked to the question of workload. In effect, the Claimant complained that when his role was expanded to cover all three of the Merton plants he had understood from Mr Smith that that would be reflected in his pay. Ms Ahwieh indicated that she would confirm the question of workload with Mr Smith.
22. Ms Ahwieh wrote to Mr Smith on 12 February 2019 and asked him three questions one of which was: "When he was asked to cover all three Merton [plants], what discussions was had". Mr Smith replied the same day saying: "the discussions that were had were to support all 3 sites to overview compliance with a report line to Gary Bowen. This was happily agreed by

Paul at the time. This was also pointed at ensuring there was enough work content for his particular role.” Mr Smith went on to suggest that the Claimant “continuously joked about” wanting a pay rise and that, to paraphrase, Mr Smith had said he had to sort out Mr Bowen’s pay before looking at anyone else.

23. The outcome of the grievance was set out in a letter dated 21 February 2019. In the section on “Increase in workload” the letter said:

“You stated that since taking on the role of Compliance Co-ordinator your workload has increased. Where in prior years you covered Merton 1, you are now required to cover Merton 2 and Merton 3. You stated you were given a contract/job description stating you work in Merton 1. Having discussed this with the Logistic Manager – Gary Bowen, we have agreed that the first stage would be to draw up a job description to enable an appropriate review of task/workload to be carried out.”

24. The Claimant immediately appealed. In an email also dated 21 February 2019, he said in respect of the increase in workload issue:

“You have put you have discussed this with Gary Bowen .. Mr Bowen is NOT my manager, Eddy Smith was so is Emmanuel Ramiere my manager?”

25. Mr Ramiere de Fortanier met the Claimant to consider his appeal on 4 March 2019. The section of the minute that deals with Mr Bowen is as follows:

“ERF – You said you have increase in work load and that is Gary [Bowen] not your manager? But for me, Gary is your line manager.

P.S. - Gary hasn’t been my manager for years

ERF – (read out an email from [Mr Smith] regarding this)¹

P.S. - I have legal issue working with Gary I had 2 years of sick because of Gary HR at Head Office are aware of this.

ERF – Reporting line manager to Gary

P.S. – “I can send report to you but that does not make you my manager” that’s what I used to do with Eddie [Smith]. I do send reports to Gary and I will work alongside of Gary,

ERF – You said there was a legal issue, I will need to speak to HR on this.

P.S. – yes.”

26. Following the meeting Mr Ramiere de Fortanier asked Ms Ahwiah to look into whether there was any reason why the Claimant should not report to Mr Bowen. Ms Ahwiah does not seem to have asked the Claimant what he meant by having a “legal issue”. Nor did she seek any clarification of his assertion that he had been off sick as a result of Mr Bowen. Her witness statement says that she “checked his file” and relied on Mr Smith’s email of 12 February 2019. She could see no reason why the Claimant should not report to Mr Bowen. She made an effort to see what the Head of HR, South East Region had to say on the matter, but no specific response is recorded.

¹ This would appear to be a reference to the email of 12 February 2019

27. I asked Ms Ahwieh whether she had looked at the grievance outcome from February 2017. She said that she had not. If she had, she told me, she would probably have reached a different decision as to whether there was any reason why the Claimant should not report to Mr Bowen. She would have considered redeployment options.

28. The Grievance Appeal outcome was recorded in a letter. The copy that I have is undated. It outlines four appeal points, the second of which is:

“Increase in workload and do not believe that Gary Bowen is your manager, it was previously Eddy Smith, therefore question if it should be the new GM – Emmanuel Ramiere”

The response to that ground of appeal is:

“A review of your workload will be considered while reviewing your job description and increase will reflect this. I have checked with HR, it is right that you report to Gary Bowen the Transport Manager as you deal with matters relating to the transport department. However, I want to make you aware that if you have any issues with Gary my door is open for you to come and discuss matter/s”.

29. It appears that Mr Ramiere de Fortanier met with the Claimant to explain the grievance appeal outcome and to discuss a job description and terms for a new contract. In an email to Ms Ahwieh and another dated 2 April 2019, Mr de Fortanier says:

“About the grievance, he discussed the fact that Gary Bowen will be his manager, showing me a letter from 2017 from HR answering the same point ... I told him that things have changed that there is now a single transport manager and that the job is related to transport, this is why Gary is to be his manager now. I insisted on the fact that he can come to see me when he wants if any issue with Gary. I asked him if he was ok with this and he said yes ... but I’m not sure we can trust him”.

By this point, therefore, Mr Ramiere de Fortanier was aware that the Respondent had agreed in 2017 to uphold its previous agreement that the Claimant should not have to report to Mr Bowen. He was aware that it was a matter about which the Claimant remained unhappy. He had decided that the Claimant should report to Mr Bowen anyway and he was sceptical about whether he could trust the Claimant’s apparent agreement. The Claimant’s evidence was that he was told that Mr Bowen was going to be his manager whether he liked it or not. That, in substance, is Mr Ramiere de Fortanier’s position too. The Claimant’s position is that he was not comfortable working for Mr Bowen, not least because he was, at that point, investigating him in respect of some wrongdoing he suspected in relation to the repair of vehicle defects. He denies telling Mr Ramiere de Fortanier that he was “ok” reporting to Mr Bowen. Instead, he simply acknowledged that that was what Mr Ramiere de Fortanier was saying would happen and that he had already decided that he would resign. I accept the Claimant’s evidence on this point. Given his hostility to the idea of being managed by Mr Bowen and having observed him in cross-examination, it is, in my view, more likely than not that he simply acknowledged that Mr Ramiere de Fortanier wanted him to report to Mr Bowen and that his lack of any genuine consent to the proposition is the reason that Mr Ramiere de Fortanier did not feel comfortable that agreement had truly been reached.

30. Mr Ramiere de Fortanier met the Claimant again on 3 April 2019 in an attempt to meet the Claimant's concerns about his proposed contract. He summarised the meeting in an email. The concluding sentence is:

"I reaffirm that Gary [Bowen] will be his manager and he tells that he understands ..."

If Mr Ramiere de Fortanier was hoping for a less equivocal statement of consent from the Claimant, he did not get it. The statement that he "understands" that he is now to report to Mr Bowen is again consistent with the Claimant's account that he made it clear he knew what he was being required to do but was not indicating that he agreed to it.

31. On 10 April 2019, the Claimant wrote a letter of resignation. In respect of the reason for termination it says:

"The company has wanted me out for a long time and have put me through hell and back over the last years,

And now not to pay me for the work I did this is not on.

In the last 3 years the jobs I have been made to do Cleaner, Painter, Chauffeur, Porter, Bayman, Delivery driver, I even pick up vehicles from Scotland, and have to do my job at the same time + more.

I have been Disciplined for not doing a job that is not my job, I in my appeal and that is in my file for all to see. I give Sunlight, Berendsen and now Elis 150% but you can see by the way some managers look and speak to me you will get me out."

32. The reference to not being paid is understood to be a reference to overtime that the Claimant felt was due to him. The reference to "some managers" is to Michelle Knox and Mr Bowen. The Claimant said that they tended to defend each other.
33. The Claimant's letter does not say: "I am resigning because you are compelling me to report to Mr Bowen". The Respondent's case is that that is only to be expected as reporting to Mr Bowen was not the reason for resignation. He resigned instead, the Respondent contends, because he was unhappy with his pay and/or his other conditions. The Claimant's position is that being made to report to Mr Bowen was what caused him to resign. I asked him directly why his letter did not simply say that. His response was that every time he had raised Mr Bowen as an issue before he had been asked to go and speak to him. He did not, therefore, see the point in raising it explicitly, but that Mr Bowen was one of the managers that he referred to in the letter as wanting him out. He felt he was entitled to resign because he had had reassurances that he would not have to report to Mr Bowen and the company were going back on those promises.
34. The resignation letter does not, of course, create an estoppel, but it is plainly significant that the Claimant did not say clearly in his letter what he has said clearly in the tribunal hearing. The Claimant's evidence before me was straightforward and unsophisticated. I should make clear that I use "unsophisticated" without any intention to insult or criticise the Claimant. What I mean is that he did not come across as a witness who was carefully cutting the cloth of his evidence to meet anticipated difficulties in establishing liability. On balance I was persuaded that the principal reason for his resignation was the fact that he was now being instructed to report to Mr Bowen.

The Issues and Determination

(1) Did the Respondent breach the Claimant's contract of employment?

35. In the light of the findings made above, the specific question is whether the Respondent breached the Claimant's contract of employment by compelling him to report to Mr Bowen. Ms Hosking, for the Respondent, contends that there was no breach. Any previous indication that the Claimant need not report to Mr Bowen fell short of an express contractual undertaking and in any event could not be reasonably understood to be, as it were, good for all time. If the situation at work changed, which it had, the matter would have to be revisited.
36. The Claimant accepted that he did not have an express contractual clause precluding his reporting to Mr Bowen. He felt he had been given reassurances and that those reassurances had, in effect, been reneged upon and that, in the circumstances, he could not have been expected to stay on.
37. If the Claimant had been an Employment Lawyer (or if he had been represented by one) he would no doubt have used the language of trust and confidence. That seems to me to be proper analysis in this case. The question is whether the employer, without reasonable and proper cause, treated the Claimant in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence.
38. The Claimant did not want to report to Mr Bowen. The latter had been the subject of disclosures made by the Claimant. The Claimant had spent a considerable period of time off sick because, at least in part, of his past concerns about Mr Bowen whom, he believed, wanted him out. There had been an agreement in 2015 that the Claimant would, it was hoped, not have to report to Mr Bowen and, in 2017, the Respondent had expressly acknowledged the existence of the agreement and undertaken to abide by it. In those circumstances, absent a reasonable and proper cause, reneging on the agreement and compelling the Claimant to work for and not merely with Mr Bowen would, I conclude, be treatment that was likely to seriously damage the relationship of trust and confidence.
39. Did the Respondent have a reasonable and proper cause? Two themes emerged in the submissions to me even if they were not put as starkly as I now do. The first was that the Respondent genuinely and reasonably believed that things had moved on and that the Claimant was now content to report to Mr Bowen. Indeed, it is said that he did so without complaint from May 2018 until February 2019. However, I have found as fact that the Claimant did not report to Mr Bowen during that period. Nor did he at any point give his consent to such an arrangement. At the point at which Mr Ramiere de Fortanier was insisting on the new arrangement he knew of the 2017 grievance and was himself in doubt as to whether or not the Claimant was happy now to do so. He told me he was "not fully sure". It would have made little sense for the Claimant to have made an issue of his reporting line, as he undoubtedly did, if he was happy to report to Mr Bowen. In the circumstances, I conclude that there was no genuine, alternatively any reasonable, belief that the Claimant was content to report to Mr Bowen.
40. The second theme is that the proposed reporting line makes good business sense. The Claimant is concerned with transport compliance and Mr Bowen is transport manager. To coin a phrase, Mr Ramiere de Fortanier had enough on his plate without having a direct report that should have been reporting somewhere else. Whilst it is not necessarily apparent that the logical reporting line was to Mr Bowen given that it was amongst other things, his own

compliance that the Claimant was tasked with monitoring, I assume for present purposes that the Respondent was entitled to organise its reporting structure in the way it considered most efficient. The question is whether that efficiency outweighs the detriment to the Claimant so as to enable me to find that the treatment was for a reasonable and proper cause. I do not think it was. First, Mr Smith, I have found as fact, was able to accommodate a structure where the Claimant worked with Mr Bowen but not for him. There is no evidence that the arrangement was causing the business generally or Mr Smith or Mr Ramiere de Fortanier specifically any particular difficulty. In fact, the evidence was to the contrary; it suggested that things were working well. Even if there had been some pressing need to put the compliance role directly into Mr Bowen's formal reporting line, it does not follow that the Claimant would have had to be the one doing the reporting. Ms Ahwiah told me, as I found above, that had she been aware of the 2017 grievance decision she would likely have wanted to explore a redeployment. Similarly, Mr Ramiere de Fortanier, who was aware of the 2017 grievance decision, expressed himself prepared to consider other options if reporting to Mr Bowen turned out to be problematic. However, given the Claimant's concern about the issue, it was unreasonable to have waited to see if Mr Bowen bullied and harassed him before contemplating alternatives.

41. In the circumstances I find that there was, to use the shorthand, a breach of the duty of trust and confidence.
- (2) Was any breach sufficiently fundamental to the contract of employment for the Claimant to be justified in treating the contract as at an end?
42. Any breach of the trust and confidence duty is repudiatory (see **Morrow v Safeway Stores PLC** [2002] IRLR 9, EAT).
- (3) Did the Claimant resign in response to any such fundamental breach of contract?
43. I have found as fact that he resigned in response to the treatment that constitutes the breach, i.e. being required to report to Mr Bowen.
- (4) Did the Claimant delay in resigning so as to have affirmed the contract?
44. This was a point that was not, ultimately, developed. The original argument had been premised on the Claimant appreciating that from May 2018 he was Mr Bowen's direct report. Ms Hosking very fairly accepted the respondent could not "necessarily establish that the Claimant clearly understood the nature of the [reporting] relationship". She accepted there was not enough evidence to show he understood that he was directly line-managed by Mr Bowen.
- (5) If the Claimant was constructively dismissed, was the dismissal fair?
45. The consequence of my answers to the previous issues is that the Claimant was constructively dismissed. The Respondent says, correctly, that it does not follow as a matter of necessity that the dismissal was unfair.

46. The reason relied on is a species of “some other substantial reason” within the meaning of **ERA 1996, s. 98(1)(b)**. Specifically, it is alleged that the reason was a business need to arrange its lines of management in the manner it considered best. I consider that that is capable of amounting to a fair reason. However, the case for a fair dismissal founders at **s. 98(4)**. Since I have found that the treatment was not for a “reasonable and proper cause”, it would not, I conclude, be appropriate to determine on the facts in this case that the Respondent should be taken to have “acted reasonably ... in treating [the reason] as a sufficient reason for dismissing the [Claimant]”.

Conclusion

47. I find that the Claimant was unfairly constructively dismissed.
48. Remedy was not considered at the hearing with the consequence that if the parties are unable to agree compensation, the matter should be listed for a one day remedy hearing.
49. This case, as is common in the Tribunal, featured a litigant in person on one side and counsel on the other. The situation can sometimes be difficult for counsel as they seek to balance robust argument for their client with their duty to the tribunal. In this case Ms Hosking did an exemplary job. She said all that could be said for her client without ever seeking to exploit the disadvantage that the Claimant might otherwise have faced as an unrepresented litigant. The Claimant represented himself with great skill and is to be commended for consistently demonstrating a calm good sense in what must have been a stressful environment.

Employment Judge Jones QC

13 January 2020