



# EMPLOYMENT TRIBUNALS

**Claimant:** Kelly Fairhurst

**Respondent:** Star Commercials Ltd

**Heard at:** Leeds (CVP)

**On:** 4 March 2024

**Before:** Employment Judge Rakhim (sitting alone)

## Appearances

**For the claimant:** Attended, unrepresented

**For the respondent:** Represented by Mr E Mayhew-Hills

## JUDGMENT

1. The claimant's complaint for constructive unfair dismissal is not well founded and is dismissed.
2. The claimant's complaint for redundancy is not well founded and is dismissed.

## REASONS

### Introduction

1. The Claimant brings a claim for constructive unfair dismissal against her former employer, the Respondent.
2. The Claimant was employed by the Respondent from 3 September 2012 to 31 August 2023 and at the time of her dismissal she was a 'Group Aftersales Manager'.
3. The Claimant started the ACAS early conciliation process on 28 September 2023. The ACAS certificate was issued on 2 October 2023. The claim was presented, in time, on 12 October 2023.

## **The hearing**

4. The hearing took place by way of a CVP remote hearing with both parties joining remotely. The Claimant was not represented and the Respondent was represented by Ms Mayhew-Hills, Litigation Consultant for the Croner Group.
5. I was assisted by a 70 page bundle. I was also provided with witness statements from the Claimant and from both witnesses for the Respondent. Finally, I was provided with Schedule of Loss, including an updated schedule. The parties confirmed there were no additional documents.
6. All witnesses affirmed, adopted their statements and had no requirements for any adjustments.
7. I heard oral evidence from the Claimant. Prior to this, I heard evidence from the following on behalf of the Respondent:
  - a. Mr Damian Longley ('DL'), Managing Director,
  - b. Mr Russ Poole ('RP'), Operations Director.
8. The Claimant cross-examined both of the Respondent witnesses. The Claimant then provided oral evidence and was cross examined by Ms Mayhew-Hills. I then heard submissions from Ms Mayhew-Hills followed by the Claimant. At the end of the hearing, I reserved my determination as the submissions finished close to the end of the day and the matter was listed for a single day hearing.
9. In reaching my decision, I have carefully considered the oral and documentary evidence, the closing submissions, and my record of proceedings. The fact that I have not referred to every document in the evidence bundle should not be taken to mean that I have not considered it.
10. Where it has been necessary to make a finding of fact in respect of contested matters, I have done so by deciding which version of events is more likely, taking the evidence in the round.

## **Background**

11. The following facts are not disputed between the parties.
12. The Respondent is an independent commercial vehicles repair business. The Claimant was employed by the Respondent as a Service Advisor from 3 September 2012, she held a number of different roles, took on additional responsibilities and became an Operations Manager from 31 August 2019.
13. In November 2022, the Claimant and DL discussed restructuring plans, which was to start with the appointment of a Finance Manager, who would undertake some of the Claimant's duties in order to allow her to move into a Group Aftersales Manager role. She sent DL a copy of her CV to apply for this role.
14. On 12 January 2023, the Claimant was updated on the plan to recruit a Group Operations Director. DL informed the Claimant that he wanted the Claimant to put herself forward for the Group Aftersales Manager, but that he was unable to go into further details on this until the Group Operations Director had been filled.

15. On 18 November 2023 the Claimant was provided a draft contract for the Group Aftersales Manager role and she documented various concerns with the contract in her email to DL on 21 February 2023.
16. RP started as the Group Operations Director on 1 May 2023 and discussed the Group Aftersales Manager role with the Claimant on 9 or 10 May 2023. She discussed the various concerns she had with the contract and he returned a week later with some amendments. The Claimant accepted the role, but was on holiday from 29 May 2023 for a week. The Claimant's new role started 1 June 2023 and she returned to work on 5 June 2023 where she undertook this new role.
17. The Claimant raised further concerns with RP and queried what she needs to do in order to leave. She met DL on 29 June 2023 and was told of the notice required in order to resign and she provided this on 30 June 2023. The three-month notice was shortened, by agreement, to two-months and the Claimant's last day was 31 August 2023.

### **The issues**

18. At the hearing before me, the parties agreed that the following issues fall to be determined in this case:
  - i. Whether or not Claimant was subject to constructive unfair dismissal?
  - ii. In alternative, was Claimant made Redundant in her previous role?
  - iii. If the above is satisfied, then the issue of remedy.
19. The Respondent agreed the Schedule of Loss. Ms Mayhew-Hills confirmed she will not rely on any argument with respect to any Polkey reduction or contributory conduct.

### **The Law**

20. The Claimant claims that she had been constructively dismissed. She resigned following, she says, of acts or omissions by the Respondent which, she says, amounted to a breach of the implied term of trust and confidence. The relevant law is as follows.
21. Section 95(1)(c) of the Employment Rights Act 1996 ('ERA') state that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal, which originally developed under the common law, is generally referred to as '*constructive dismissal*' and is, in contractual terms, a discharge by breach.
22. In the leading case in this area, **Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221, CA, the Court of Appeal ruled that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it:

*'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed'*

23. In order to successfully claim constructive dismissal, the employee must establish that:
- i. there was a fundamental breach of contract on the part of the employer,
  - ii. the employer's breach caused the employee to resign,
  - iii. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
24. Where an employee has mixed reasons for resigning then their resignation will constitute a constructive dismissal provided that the repudiatory breach relied on was at least a substantial part of those reasons - **Meikle v Nottinghamshire County Council** [2004] EWCA Civ 859, [2005] ICR 1.
25. A breach of the implied term as formulated in **Malik v BCCI; Mahmud v BCCI** [1997] 1 IRLR 462, will only occur where there was no '*reasonable and proper cause*' for the conduct in question. The burden of proving the absence of reasonable and proper cause lies on the party seeking to rely on such absence — **RDF Media Group plc and anor v Clements** [2008] IRLR 207, QBD. As in that case, this will usually be the employee.
26. An employer's failure to engage with an employee's grievance in a full and fair way may lead to a finding that it has breached the implied term of trust and confidence. So, for example, if what lies at the heart of an employee's grievance is a legitimate complaint that the employer's conduct has caused significant detriment to the employee's earnings, the unfair rejection of that complaint may well comprise a breach of trust and confidence — see **Nicholson v Hazel House Nursing Home Ltd** EAT 0241/15. As Mrs Justice Laing observed in that case: '*Wrongly to reject such a grievance is a significant matter.*' Of course, the substance of the employee's grievance may itself contain allegations that amount to a breach of trust and confidence, but that is another matter.
27. A constructive dismissal is not necessarily an unfair one — **Savoia v Chiltern Herb Farms Ltd 1982** IRLR 166, CA. A breach of trust and confidence may also arise not so much from the unfair rejection of a grievance as from the way in which the grievance was handled. In **WA Goold (Pearmak) Ltd v McConnell and anor** [1995] IRLR 516, EAT, the EAT upheld an employment tribunal's decision that an employer is under an implied duty to '*reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have.*'
28. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract — **Lewis v Motorworld Garages Ltd** [1986] ICR 157, CA. However, an employee is not justified in leaving employment and claiming constructive dismissal merely because the employer has acted unreasonably. This was confirmed in **Bournemouth University Higher Education Corporation v Buckland** [2010] ICR 908, CA, where the Court upheld the decision of the EAT that the question of whether the employer's conduct fell within the range of reasonable responses is not relevant when determining whether there has been a constructive dismissal.
29. In **Omilaju v Waltham Forest London Borough Council** [2005] ICR 481, CA, the Court of Appeal explained that the act constituting the last straw does not have to be of the same character as the earlier acts, nor need it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the

employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective. And while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test. In that context, in **Chadwick v Sainsbury's Supermarkets Ltd** EAT 0052/18 the EAT rejected a tribunal's finding that a threat of disciplinary action was 'an entirely innocuous act' that could not constitute a last straw.

30. Where the act that tips the employee into resigning is entirely innocuous it will be necessary to consider whether any earlier breach has been affirmed. In **Williams v Governing Body of Alderman Davies Church in Wales Primary School** EAT, it was held that where there is conduct by an employer that amounts to a fundamental breach of contract, a constructive dismissal claim can succeed even if there has been more recent conduct by the employer which does not in itself contribute to a breach of the implied term of trust and confidence, but which is what tips the employee into resigning. Crucially, however, the employee must not have affirmed the earlier fundamental breach and must have resigned at least partly in response to it.
31. If the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract resulting in the loss of the right to claim constructive dismissal. In the words of Lord Denning MR in **Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221, CA, the employee

*"must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged"*

32. The Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust** [2019] ICR 1, CA, held that, in last straw cases, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign.
33. The Court of Appeal in **Kaur** (above) offered guidance to tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed:
- a) what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
  - b) has he or she affirmed the contract since that act?
  - c) if not, was that act (or omission) by itself a repudiatory breach of contract?
  - d) if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?
  - e) did the employee resign in response (or partly in response) to that breach?

34. With respect to redundancies, Section 139 (1) of the ERA states as follows:

*1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—  
(a) the fact that his employer has ceased or intends to cease—*

- (i) to carry on the business for the purposes of which the employee was employed by him, or*
  - (ii) to carry on that business in the place where the employee was so employed, or*
  - (b) the fact that the requirements of that business—*
    - (i) for employees to carry out work of a particular kind, or*
    - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,*
- have ceased or diminished or are expected to cease or diminish*

## **Findings of fact**

35. The starting point is whether there is a breach of contract, and whether that breach is a significant repudiatory breach going to the root of the employment contract.

### *The Claimant's reasons for resigning*

36. The Claimant's resignation letter of 30 June 2023 did not provide reasons for leaving and it simply confirmed the agreed reduced notice period and her final working day as 31 August 2023.

37. In her Particulars of Claim and her witness statement, the Claimant states the following:

- a. In the November 2022 restructuring discussion, she had been told her role at the time (Operations Manager) would no longer exist. She was shown a new structure where the role was no longer present. She argues that the need for her role had ceased and she should have thus been made redundant.
- b. At the same November 2022 meeting, the Claimant was told that she should apply for the role of a Group Aftersales Manager, which was portrayed as being similar to her current role, overseeing all staff and departments and directly reporting to the Managing Director, namely DL. She provided a copy of her CV for this purpose.
- c. However, nothing further was heard until she aired her concerns to DL on her current role within the company on 12 January 2023. At this point she was told of the plan to introduce a new Group Operations Director. She was told DL did not see her suitable for that role and suggested she apply for the Group Aftersales Manager. She informed that she had applied for this in November 2022 and had heard nothing, and was then advised by DL that the Group Operations Director role had to be filled before further details could be considered in respect of other roles.
- d. In response to the draft contract for the Group Aftersales Manager role received on 18 February 2023, the Claimant emailed DL on 21 February 2023 with various concerns including the lack of a salary being stated, a lack of job description and being subject to a three-month probationary period that may result in her losing her job. When contrasting to her current role, she also raised the increase in hours (from 40 hours per week to 50 hours per week), the company car becoming a taxable benefit and a lay-off clause being added she considered unfair as no other company employee was subjected to such a clause.
- e. The Claimant corresponded with DL a number of times but did not get the clarity required, so she asked if she could be made redundant and was told there is no redundancy. She again asked DL about being made redundant on

28 April 2023 as she did not feel the role offered was suitable or required in the new structure.

- f. The Claimant repeated these concerns to RP, after he started, in a meeting on 9 or 10 May 2023. She felt her concerns on the salary and car benefits were ignored by RP. She raised concerns about the contract not relating to the company entities she would have to work for and she concluded that RP needed her to sign off on the role, knowing the role would not work out, so she could be forced out.
- g. When RP reverted a week later, not all the issues were addressed, with the hours now reduced to 42.5 and the correct company entities now named. The Claimant felt like she had no choice but to accept the role as her existing role no longer existed in the new structure, she felt she had nowhere to turn and could not afford to walk out.
- h. The Claimant started the new role on 5 June 2023, but no one was aware of her role change, no guidance was provided on the new role, she was not allowed to attend meetings she had been invited to and she was not involved in future company planning. She says she was placed on reception and she was asked to oversee the parts department. As a result she told RP the role was not as advertised, she did not feel there was a role and she did not like the situation, thus asked him what was required to leave. DL informed her in a meeting on 29 June that official written notice was required, which the Claimant provided the next day.
- i. The Claimant says she was told her existing role was removed, but the role did exit and was given to RP. She felt the Respondent refused to accept this was a redundancy. She says she reluctantly trialed the new role, believed she was being pushed out and felt she had no choice but to resign.

38. The issues of concern to the Claimant can be summarised as her being forced out of her existing role and replaced by RP, and then being given a new role which was unclear and non-existent, thus causing her to leave.

*How the new position came about*

- 39. I noted DL's evidence in relation to why the new position came about.
- 40. Within his witness statement, he acknowledged that the Claimant was integral to the success of the company, the company grew rapidly, and the Claimant had taken on additional responsibilities including bookkeeping and sales. He also says he relied on employees, including the Claimant, to run the business as he had had to be absent from work for certain periods over recent years.
- 41. This was consistent with the Claimant's oral evidence that she became an Operations Manager in August 2019, this involved overseeing each depot and over the last two years it took an increasing amount of time, with increasing responsibilities. This included being involved in human resources, the workshop, overseeing health and safety as well as anything else required. She explained that she was doing the Aftersales role anyway, and that this involved the service department and the parts department. It was the latter role (Aftersales role) that DL wanted her to move into with the proposed change.
- 42. The first major change implemented was approximately 3 years ago when DL decided to pass bookkeeping and accounts to another employee who specifically did that role. As the business grew he needed to make changes to keep pace with this by hiring more

employees and changing practices. He says the Claimant struggled to accept his attempts to bring a new influence into the business to assist, with a specific incident involving the new manager undertaking accounts/bookkeeping resulting in the Claimant walking out (see further below). DL says he was working long hours in 2022 and had taken on too much responsibility, thus decided to bring somebody in to help him manage the business and to assist in its growth. This turned out to be RP, in the role of an Operations Director, whom DL consulted on structuring the business. It was decided between them that a Group Aftersales Manager was required, with the intention for this role to be proposed to the Claimant.

43. Within his witness statement, DL stated various health matters related to the Claimant and states that he was aware the Claimant was stressed and having a difficult time with her health. He says he did not wish to make the stress worse. He then went on to discuss the changes made. I accept the company was growing, over recent years DL had to take time away from the business and he was struggling due to the long hours he was working in 2022. I do not find this was related to the Claimant's health. In cross examination, DL conceded that there had been no formal discussion with respect to the Claimant's health, the changes he implemented were unrelated to the Claimant's health and he thought everyone was stressed and it got to a stage that he needed to take steps.

*Reason for resignation*

44. There is no dispute that the Claimant's role was integral to the growth, as conceded by DL in his witness statement. Previously the Claimant had walked out when there were issues with the second manager hired in relation to the accounts/bookkeeping and DL had persuaded her to return. DL had explained this in oral evidence that he could see the Claimant was upset, he let her calm down and the next day he spoke to her, encourage her to rescind her notice, she agreed and she withdrew the notice.
45. DL says the company grew rapidly, the Claimant had taken on additional responsibilities including bookkeeping and sales, and that he relied on the employees to run the business when he had time off, which included the Claimant. In oral evidence, DL stated that he had discussed with the Claimant for the need to employ someone for the bookkeeping and accounts, which were added duties that the Claimant had taken on. It was undisputed that the Claimant was involved in the employment and interview process for this individual. The Claimant accepted that she had considered her role was changing in any case and that she was happy with the recruitment that took place.
46. The dispute seemed to arise over the lack of communication and/or understanding between DL and the Claimant on the further changes to assist the growth of the company. The recruitment of the individual for the accounts/bookkeeping was three years prior, and then the next communication of further changes was not communicated until the November 2022 meeting. DL accepted there had been no official conversation taking place with respect of his 'divisionalisation' plans as he did not believe the company had got to that stage yet.
47. There was no suggestion that that DL was required to consult on changes to assist the growth of the company. To the extent any changes were to impact the Claimant, it was undisputed that DL had discussed the new role envisioned for the Claimant in November 2022 and had asked her to apply for this and reiterated this on 12 January 2023.
48. DL explained that when RP came on board he felt that the Claimant was unhappy. He accepts she remained professional and cooperative, but says she was vocal on things



being pulled away from her and the differences thus arose. The Claimant feels she had been pushed out. The Claimant says she was invited to a meeting with customers and staff where a new transport person was to be introduced, but was told she was no longer needed in the meeting. She accepts there was some uncertainty in respect of her new role.

49. I concluded that the Claimant's role with the Respondent changed, DL was unable to clarify the role to her satisfaction and he was unable to finalise this until the Operations Director had been put in place. It was apparent that the company was growing quickly and the finer points of the new role proposed to the Claimant were not clear to DL. This was something that was developing, as is the case in the real world, and I do not find that this was so serious, and going to the root of the contract, that it would result in a significant breach.
50. It would not be surprising that the Claimant would not be required to attend certain meetings as there was now a new Operations Director and the Claimant's role had changed. There was insufficient evidence for me to draw any conclusions on the exclusion from the meeting(s) as neither party dealt with this at the hearing.
51. I do not find any grievance was raised by the Claimant. The Claimant says in oral evidence she did raise a grievance with RP on why she was not involved in certain matters and if there was anything that he wanted her to do, but that she felt she was being brushed off. This was not raised with either of the Respondent's witnesses so I was unable to attach much weight to this. I could not be clear on exactly what was said without hearing from both sides. RP's oral evidence was that he thought they were moving forward and the resignation came as a shock to him, which indicates the Respondent was not aware of anything akin to a grievance being raised.
52. In any case, I do not accept these conversations amounted to a grievance as the discussions were vague and the Claimant accepted that she had failed to raise any written grievance. It was unclear why she did not raise a written grievance and when asked about this at the hearing she simply stated she had raised other matters in the past that had not been dealt with and she could not deal with the situation any longer. However, without commencing a formal grievance procedure the Claimant did not give the Respondent a chance to formally investigate the issues and to try and resolve them.
53. In oral evidence, the Claimant stated she did not want the new role previously, but RP had explained the vision moving forward and following them discussions she felt that this was something that she could get involved with. The fact that the role was not what she expected it to be is a different matter; the Claimant signed the contract and took on the new role expecting she would be able to undertake the role and get involved.
54. I also note her evidence that she did not feel like there was in fact a role for her. The Claimant was unable to point towards a single event that had led to her resignation, but rather she was unhappy with the way role materialised. Upon leaving, she did not indicate the reason for leaving as being the Respondent's conduct.
55. Therefore, I did not find there to be any significant breach. The company was evolving, which explained the lack of clarity on the future plans. I did not find that Respondent had shown any intention to no longer be bound by any of the essential contractual terms. No grievance had been raised by the Claimant. I was unable to identify any 'last straw' incident, and if there was then I do not find the Claimant resigned in response to it as she left due to securing an alternate job offer.

*Affirmation*

56. It is a settled principle that if an employee waits too long before resigning, then the employee can be taken to have affirmed the contract, thus losing the right to claim constructive dismissal.
57. I find that the Claimant had affirmed the contract by agreeing to the contract for the new role and working in this role for a little over four weeks. She had a discussion with RP, raised some concerns about the contract and some amendments were made, namely the hours were reduced to 42.5 hours per week and the companies were added to the contract as requested. The Claimant says she felt she had no choice but to accept this role, however she had elected to accept the job at that moment in time and she did not leave.
58. In cross examination, the Claimant stated the extent of the changes were not enough to make it viable for her. I do not accept that every change requested by the Claimant had to be acceded to by the Respondent, as it is for the employer and employee to come to an agreement on terms. At the hearing, the Claimant accepted that she signed the contract and she also accepted that this indicated she was happy to proceed with the contract with the amendments that had been made.
59. On balance, I considered that in the context of the negotiations, and the various steps taken by DL to keep her in the role, it was unlikely that this means the employer would look to terminate the employment. The Claimant could have sought clarity on the steps and potentially negotiated further. At no point was she told that she would be terminated.
60. The Claimant took some annual leave and started this role on 5 June 2023 and after a period of working she submitted her resignation on 30 June 2023, with her final date negotiated as 31 August 2023. Although not mentioned in her witness statement, she started a new job on 11 September 2023, as indicated in her Schedule of Loss. This was shortly after her notice period with the Respondent had come to an end.
61. The Claimant stated she started looking for a job due to how the Respondent had treated her. At the time that she resigned, she accepted that she had been offered a job, but states she had not accepted it and that she did not know the length of her notice period with the Respondent. In response to whether she was content to work in the role until she found alternate employment, the Claimant answered she found a job, she did not want to burn bridges by just leaving, and so she agreed her notice before leaving.
62. The Claimant did the new role for over four weeks. She stated that she had sought to reduce it to a month's notice, the employer had told her three months notice was required and they settled on two months notice, but she left after one-and-a-half months as she used her holidays before she left. The Claimant says she never ended up going to the job offered, but it was undisputed that she had the job offer at the time she handed in her notice and negotiated her notice period. She had started a new job within days of leaving, albeit it was unclear when she had received the offer for this second job.
63. The Claimant's evidence was that she secured another job offer as she no longer wanted to continue working for the Respondent and that she could not leave without first knowing she had another job to go to. The Claimant stated that the new job was not better than the role she resigned from with the Respondent, but I was unclear she was referring to the role she had received an offer upon when she resigned, or whether she meant the role she in fact started in September. In any case, there is no requirement to

compare the roles as it is undisputed that there was another job offer, hence the exact details of the role matters little.

64. The Claimant waited until she had a job offer before resigning and in the meantime she was able to assess the new role as she was undertaking it. On the one hand the Claimant says she had the concerns since sending the email to DL on 21 February 2023, but on the other hand once she had negotiated terms, she signed the contract and she started the Group Aftersales Manager role. It is unclear when she started looking for a job, but there was no evidence that this was before starting the new role. I find she did not like the new role and some time after starting it she looked for an alternate role.
65. The Respondent's behaviour could not have been so egregious or damaging to the relationship that the Claimant had no alternative other than to resign. I find that she did have an alternative and she chose to exercise that, namely to wait until she had another job offer before resigning. On the evidence before me, I find it to be unlikely that the Claimant would have left until she secured another job, as that is what she indicated in her oral evidence and that is exactly what she in fact did.
66. Whilst the Claimant may not be happy with her role, I did not find that the Respondent's conduct was such that it put the Claimant in a position of having no alternative but to resign. It does not amount to a serious breach if the accepted role did not match up to the Claimant's expectations.
67. I do not find there to be constructive dismissal. The Claimant could have resigned before signing the contract, or after signing it once she realised the role is not what she expected. Instead, she chose to start looking for alternate jobs, secured an alternate offer and then queried with the Respondent on the notice period required before resigning thereafter. If there was any breach, then I find the Claimant had affirmed this but failing to resign in response to it.

#### *Redundancy*

68. The particulars of claim state that redundancy is alleged in the alternate to constructive dismissal. Section 139(1)(b)(i) of ERA requires the ceasing or diminishing of the requirement of the Respondent's business with respect to employees to carry out work of a particular kind.
69. The Claimant queries why she had to apply for the new role if her existing job was there. I note when she previously resigned DL had encouraged her to withdraw her notice and return, which the Claimant did in fact do.
70. During oral evidence, the Claimant said she had asked DL what would happen if she did not accept the changes and he had replied that they would have to through other avenues. DL stated in his statement that neither he nor RP had suggested that the Claimant was not wanted in the business, and I accept this as RP stated he was shocked when she did resign.
71. I note the Claimant had managed to successfully negotiate a change in some of the contractual terms with RP once he started in May 2023. She then received a revised contract which she signed. It was the Claimant's own evidence that she had a conversation with RP on the role and she appeared to be content with the role.
72. During the hearing, the Claimant asked DL whether the Operations Manger role that she did was still there, which I take to mean whether the role still existed in the business. DL replied to say that it was still available, they had asked the Claimant if she would move into the new role and the void of her role was still to be discussed as they were

still restructuring the business. I accept the Respondent considered the Aftersales Manager role to be a priority and noted the Claimant had stated she had done elements of that role in her previous role as an Operations Manager. I accept DL's evidence that the Operations Manager role had not ceased, rather it had not been filled or dealt with due to the restructuring.

73. I note the hierarchy handwritten diagram presented to the Claimant did not have the Operations Manager role, but I understood this was shown at an early stage of the discussions and DL stated at the hearing that this hierarchy was not final as he was in discussions with everyone and was just showing his thoughts at the time. It was unclear when the second computerised hierarchy diagram was created so this did not assist me.
74. RP started with the Respondent in May as an Operations Director. In cross examination, the Claimant accepted that this was not her job title, but added that a lot of the responsibilities she had were taken over by RP. She specifically stated that she was no longer involved in human resources, insurance or health and safety. However, I note there was a consensus that the Claimant's role had grown over the years and she had taken on many responsibilities, which included in Aftersales elements. Although some of the responsibilities undertaken by the Claimant were now done by RP, I do not find that RP replaced her as he had a different job title, parts of his role did differ and he was being paid a salary that was 76% more than what the Claimant had been paid.
75. With respect to what she did as an Operations Manager, there were some responsibilities that the Claimant was invited to continue with, namely the Aftersales element. I did not find the Claimant was subjected to a redundancy.
76. If there was a redundancy situation, then the Claimant was being offered suitable alternate employment, which was the Aftersales Manager role. The Claimant says she should have been involved with the customer coming into to introduce themselves to the business as her job description says she has to build and maintain customer relations. She says she was no longer involved in the discussions at the workshop, and was made to feel like she should not ask questions. As mentioned earlier, this business was in a developmental phase, with RP having only come into the business in the month prior to the Claimant starting her new role. Due to the Claimant having had lots of responsibilities added to her role over the years, it was inevitable that some of these would be reallocated as the business continued to grow.
77. The Claimant's view that there was no role there with respect to the Aftersales Manager role. However, I note she had signed a contract, was being paid and appeared to still be dealing with the service department and the parts department, which is related to the Aftersales role. Although I accept the Respondent was light on the details (for the reasons given earlier), I do not accept that there was no role there for the Claimant.
78. The Claimant worked her new role for just over four weeks before resigning. I considered that the role did not meet her expectations and that is the reason she sought alternate employment and then resigned from the Respondent's job.

### *Conclusion*

79. I do not find there to be any breach of contract that was causative and responsible for the Claimant resigning. I do not accept the conduct of the Respondent amounts to a breach going to the root of the contract of employment, or which shows that the Respondent no longer intends to be bound by one or more of the essential terms of the contract.

80. For those reasons I find that the Respondent did not act in a way which was calculated or likely to destroy or seriously damaged the implied term of trust and confidence. I do not find there to have been any breach by the Respondent. The Claimant resigned from her employment, but she was not constructively dismissed, and the claim fails.
81. I also do not find there to be any redundancy. The Claimant was offered an alternate role, which she accepted and worked for over four-weeks before resigning as she had secured an alternate job offer. Thus the redundancy claim also fails.

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Employment Judge Rakhim

(signed electronically)

1 April 2024

Sent to the parties on:

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For the Tribunal Office:

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