



EMPLOYMENT TRIBUNALS

Claimant

Lydia Joyce

Respondent

v City and County Graphics Limited

Heard at: Reading

On 18, 19 and 20 November 2024

Before: Employment Judge Anderson

Appearances

For the claimant: M Sharp (counsel)

For the respondent: I Wheaton (counsel)

JUDGMENT

1. The claimant's claim of constructive unfair dismissal is upheld.
2. Remedy will be determined at a hearing on 3 February 2025.

REASONS

Background

1. The claimant resigned from her employment with the respondent on 6 September 2023. Early conciliation commenced on 14 September 2023 and ended on 11 October 2023. The claimant filed a claim in the employment tribunal on 18 October 2023 claiming constructive unfair dismissal. The respondent denies that the claimant was dismissed and states that her resignation was voluntary, and not due to any alleged breaches.

The hearing

2. The parties filed a joint bundle of documents of 106 pages. Two documents were added at the outset of the hearing by the respondent. The claimant did not object to the inclusion of these documents which were a statement she made in support of the respondent in another employment tribunal claim in 2017, and an email from Mr Dunderdale of the respondent to himself on 6 September 2023.

3. In addition I received a witness statement from the claimant, a witness statement from Mr Dunderdale of the respondent, and closing submissions from the claimant's counsel, Ms Sharp.
4. There had been no case management hearing in this case but an order was issued by EJ George on 5 March 2024 which in part ordered the claimant to provide further details of the breaches of contract on which she relied. She provided that information on 18 March 2024 and it was included in the bundle. Also included were two lists of issues, one from each party. Ms Sharp said that the claimant largely agreed with the respondent's list which set out the breaches in pared down form , with some amendments. I have set out the list of breaches below, noting the amendments
 1. Sometime in 2011 Mr Dunderdale said that he would pay for the Claimant to be sterilised so she would never be able to take maternity leave;
 2. On or about 2011 the Claimant was called a "fucking useless cunt";
 3. That on occasions during the Claimant's employment Mr Dunderdale had raised his voice and sworn at the Claimant;
 4. On 12 July 2016 Mr Dunderdale threatened to push Mr G Shergold down the stairs if he mentioned a promotion again;
 5. On or around July 2022, Mr Dunderdale rented a storage facility;
 6. On or around early 2023 the Claimant along with her fellow Directors were asked if they could raise money via a short-term loan;
 7. On 26 June 2023 Mr Dunderdale made 3 people redundant;
 8. On date unknown Mr Dunderdale had referred to staff as "lazy twats"
 9. On 6 September 2023 Mr Dunderdale had said to the Claimant her not cancelling her annual leave, "proves that you don't care about the business" [Ms Sharp clarified that this was about trying to reverse the annual leave grant and the manner in which it was done].
 10. On 6 September 2023 Mr Dunderdale alleged that the Claimant was not committed to her job. [Ms Sharp clarified that this was about the intimidating manner of Mr Dunderdale and the comments made in the meeting – it was about the whole meeting].

Law

5. Section 95(1)(c) Employment Rights Act 1996 ("ERA 1996"):

95 (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) and only 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.

6. The applicable test for a claim of constructive unfair dismissal was summarised by Lord Denning (then Master of the Rolls) in Western Excavation (ECC) Ltd v Sharp [1978] IRLR 27:

"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 his employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he 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. He will be regarded as having elected to affirm the contract".

7. The breach of contract alleged in this case is the implied term of mutual trust and confidence. That is that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee: Malik v Bank of Credit & Commerce International SA [1997] ICR 606, HL.

Findings of Fact

8. The claimant was employed by the respondent from 8 November 2010. At the time of her resignation on 6 September 2023 the claimant's role was Client Services Director.
9. The respondent is a company that manufactures and installs signage. It has around twenty five staff. Malcolm Dunderdale is the sole owner of the respondent company and is the line manager of the four heads of department, who are given the title of director. Until her resignation the claimant was one of the four heads of department.
10. It is alleged by the claimant, and denied by Mr Dunderdale, that

1. in or around early 2011 Mr Dunderdale said to her that he would pay for her to be sterilised so that she would never need to take maternity leave, and
 2. in or around early 2011 Mr Dunderdale called the claimant a 'fucking useless cunt'.
11. I find on balance, on a consideration of the witness evidence before me, there being no documentary or third party evidence, that Mr Dunderdale did make those comments to the claimant. The alleged comments are very specific and firmly placed in time by the claimant at the outset of her employment when she was young and a junior member of staff. She has not alleged any comments of such a nature directed specifically at her in the remaining years of her employment. These factors persuade me that the claimant is truthfully setting out her recollection of those events. I have taken into account Mr Dunderdale's evidence that those are not comments he would make, or swear words he would use at work or at home, however, I note that it is admitted that Mr Dunderdale told an employee in 2017 that he would throw him over the banister if he did not stop talking about a promotion, and I have also had the benefit of viewing emails from Mr Dunderdale to his senior staff in 2023. I conclude from the tone of those emails, even though they do not contain sexist or bad language, that he is a person who could have made the comments alleged.
12. On 12 July 2016 Mr Dunderdale threatened to push an employee, GS, down the stairs if he mentioned promotion again. GS filed a claim in the employment tribunal which was later withdrawn, but got to the stage where the respondent produced witness statements as part of its defence. The claimant provided one such statement. In the statement she said that she found GS's claim that the comment amounted to a threat to his health and safety to be ludicrous. She goes on to say that Mr Dunderdale is a hard working business man, not a threat to any of his employees and if she had felt threatened she would have left the premises immediately.
13. The claimant's evidence was that her statement related specifically to whether Mr Dunderdale's comment was a threat to the health and safety of GS and the case was not going to get to a hearing. She said that she did not write the statement and that she would have changed it had the case gone to a hearing. I note that the statement is signed and includes a statement of truth and find that the views expressed in the statement in the paragraphs my attention was drawn to were the views of the claimant at that time.
14. It is alleged by the claimant that at some point, and I understood this to be subsequent to the event concerning GS in 2016, and most probably post Covid, Mr Dunderdale referred to employees who work from home as 'lazy twats', the latter of those words being an acronym for Tuesday, Wednesday and Thursday. The meaning being that people work from home on Monday and Friday and may be shirking. In cross examination, though not in her pleadings or witness statement, the claimant explained that the conversation arose as Mr Dunderdale had read an article using this acronym in the newspaper, and used it to refer to the respondent's own staff. In his witness

statement Mr Dunderdale said he had no recollection of using the phrase. In oral evidence he said that he remembered such an article and accepted he would have mentioned it in the office but denied that he had used it about the respondent's employees. The claimant said that he had used it about respondent employees who work from home and as she knew staff members who worked diligently from home she found this to be offensive.

15. Again, in the absence of third party or documentary evidence, and noting the tone of Mr Dunderdale's emails from 2023 I find that the comment was used by Mr Dunderdale to describe employees of the respondent who worked from home.
16. In June 2022 an industrial unit (P1) became available to rent on the same industrial estate on which the respondent was based. It is the claimant's case that the claimant and her three fellow directors felt that this was not a good use of company funds at a time of financial uncertainty. Mr Dunderdale disagreed, believing it made sound financial sense, and rented the unit, overruling the directors. One of the uses that P1 was put to was for the storage of classic cars belonging to Mr Dunderdale. The claimant had until the hearing believed the cars belonged to Mr Dunderdale. At the hearing he said in cross examination that the cars were company assets.
17. On or around the beginning of 2023, Mr Dunderdale asked the directors to loan a sum of £10,000 each to the respondent. The directors were not shareholders, and the title 'director' was simply a job title. The directors refused to do so.
18. In an email dated 26 February 2023 from Mr Dunderdale to the directors, in which he tells them what must be done to save money, he refers to the fact that the directors refused to agree a loan.
19. That email is principally concerned with ways of saving money, i.e. ways that the respondent could tighten its belt in an uncertain financial climate. I find that the tone of the email is rude and aggressive. It contains a dismissal of the ideas that the directors have come up with in fairly scathing terms and is followed by a series of orders in which no attempt at politeness is made. The fact that the email starts and ends with politer sentences does not ameliorate its overall impolite and angry tone.
20. On 26 June 2023 in a meeting at around 3pm Mr Dunderdale told the directors that the respondent needed to make three people redundant immediately as it could not afford the wage bill. The directors asked for a 24 hour period in which to action this order so that they could determine which employees it was essential to retain. Mr Dunderdale agreed to the request. However, overnight, he changed his mind. Mr Dunderdale said in cross examination that this was because he decided it was his responsibility to carry out such an unpleasant action. He informed the claimant when she arrived at the office on 27 June 2023 that he had already made two employees redundant and she needed to inform Nathan Bourton that he was the third person within the next ten minutes, or Mr Dunderdale would do it himself.

21. Nathan Bourton was subsequently re-engaged by the respondent, a decision made by the claimant.
22. The claimant's team consisted of two senior project managers and one trainee project manager. On 31 May 2023 one of the senior project managers tendered his resignation, with his last day of employment to be 12 July 2023.
23. On 10 July 2023 the claimant booked annual leave for the four days from 11 September 2023 to 14 September 2023. The leave was approved by Mr Dunderdale.
24. On 9 August 2023 the remaining project manager resigned with his last working day to be 5 September 2023. The claimant raised this issue at three directors' meetings in August 2023 at which Mr Dunderdale was present. Other directors said they would help out and no concerns were raised about the claimant taking the holiday. The claimant also requested a new laptop as hers was not working, so that she could deal with any urgent matters whilst on holiday.
25. On 5 September 2023 at 19:14 Mr Dunderdale sent the following email to the directors:

Subject: Holiday

I have learned today that next week the Client Services Department (project management) will have no one in that department for four days next week because of holiday (I do not consider Nathan a serious member of that department)

Will somebody please explain to me how that department will function from the 11th to the 14th with nobody in it?

I have heard that we will 'muddle through', that people will muck in and help, that we'll find a way... Other people have their own jobs to do, their own departments to run, I will not allow them to take focus away from their own jobs.

Do we allow the print room to have nobody in it? Do we allow the studio to have nobody in it? Do we run without any fitters whatsoever for a week? This is not acceptable. This is not how we operate. This is not how a business functions. An explanation is required.

M

26. I find that Mr Dunderdale knew by 9 August 2023 what the staffing level would be when the claimant was on leave in September and had not learned of it on 5 September 2023 as set out in the email.
27. As with the email of 26 February 2023 I find that the tone of the email is rude and aggressive. These two emails form the only documentary evidence before the tribunal of Mr Dunderdale's written communications with the claimant.

28. On 6 September 2023 when she arrived at work the claimant went to speak to Mr Dunderdale. He was in unit P1. They briefly discussed a business matter that he had raised a query about, then discussed the email of the 5 September 2023.
29. The claimant's evidence is that Mr Dunderdale said the email was a test of her commitment to the business and proved that she did not care about the business. She said she explained to him that she had a plan to cover urgent work and gave an example of when she covered annually for another director. He said he was not interested in that but in the 'here and now'. He asked her to cancel her holiday and offered to pay cancellation fees.
30. Mr Dunderdale's evidence is that he discussed with the claimant her responsibilities as a director and the irresponsibility of leaving the department unstaffed. He then asked her to change her mind and offered to cover the costs of any cancellation fees. He said that he did not specifically recall saying that this proved she did not care about the business. He said that the example she gave of covering for another director was not a comparable situation.
31. I find that on a consideration of the evidence given by Mr Dunderdale as to what he did say in the meeting about irresponsibility and his evidence that he believed a director should make personal sacrifices for the greater good of the business that he did say that the email was a test of the claimant's actions and proved she did not care about the business. I have taken into consideration that it was not put to Mr Dunderdale in cross examination that he used the word test, however I have also noted that this allegation is set out clearly in the particulars of claim at paragraph 7p and is not addressed or denied in Mr Dunderdale's witness statement. In cross examination the claimant was asked about the conversation a number of times and said on three occasions that Mr Dunderdale had said the email was a test.
32. The claimant ended the discussion by saying that she was going on holiday and not working for the respondent any longer. She returned to her office, and typed a resignation email as follows, before leaving the premises:

Dear Malcolm,

Please accept this letter of resignation for my role at City & County Graphics as Client Services Director with immediate effect.

I feel that my time and place here has come to an abrupt end due to the personal issues that you have directed at me in front of the rest of the management team which I feel are unjustified and unfair.

I do not feel comfortable being in this environment.

I wish you and the company every success for the future;-

Yours sincerely

33. The claimant's resignation was accepted in writing the next day.

34. On 29 September 2023 the respondent invited the claimant to a grievance meeting. The claimant declined to attend.

Submissions

35. The two paragraphs below are a synopsis of the oral submissions made by counsel.
36. For the respondent, Mr Wheaton said that this was a last straw case and not one where it was alleged that the incidents of 5 and 6 September 2023 would have caused the claimant to resign. When asked in cross examination if she would have resigned if none of the others factors had happened she said she did not know. He said that some of the acts relied upon as constituting a series of events were very historic. There was a clear disagreement on the facts but even taking the claimant's case at its highest the first two acts are so historic that the claimant has affirmed the contract. It is the same with the GS incident and additionally there was an issue of credibility in relation to the claimant's evidence at this hearing and her contemporaneous witness statement in the GS case. In relation to the renting of P1 and making staff redundant these were business decisions the respondent was entitled to make. The claimant has tried to backfill the claim with a number of incidents she remembered, none of which she brought up at the point of resignation. She cannot rely on the last act as the sole reason for resignation and has not identified any issue from the P1 unit issue onwards that would amount to a fundamental breach giving rise to a revival of an earlier breach. The claimant said she felt undermined and humiliated but in Mr Wheaton's view she felt undermined and humiliated where she did not agree with an outcome.
37. Ms Sharp relied on written submissions. In oral submissions she said the conduct of the respondent was much more than conduct that the claimant did not like and as such that it destroyed or seriously damaged the employment relationship. She was picked on and criticised in the email of 5 September and told she was being tested on 6 September. On the earlier acts, the claimant could not be expected to put her head above the parapet when she was a new and junior employee. In her witness statement for GS she said she would leave if she felt threatened, and she did. The GS case was about health and safety, not about bullying and intimidation as the claimant's case is. Her position of seniority is not a justification for the respondent's actions. The respondent did not bring any witnesses and Mr Dunderdale said that 99% of his emails were sent to accounts but there is very little in the bundle. The email Mr Dunderdale sent to himself on 6 September must have been because he knew the events were significant, as his conduct was appalling.

Decision and Reasons

38. The claimant claims she was constructively unfairly dismissed and relies on a breach of the implied term of mutual trust and confidence. Her case is that a series of events from 2011 until 6 September 2023 cumulatively gave rise to a breach of the implied term of trust and confidence on 6 September 2023

when she met with Mr Dunderdale to speak to him about the email he had sent to her and her director colleagues on 5 September 2023. Her case is that Mr Dunderdale's comments in the meeting of 6 September 2023 were the last straw in a series of events.

39. Any breach of the implied term of mutual trust and confidence by an employer will be a repudiatory breach giving rise to the right to terminate the contract of employment by the employee
40. The matters for the tribunal to consider in last straw cases were set out by the court of appeal in the case of *Kaur v Leeds Teaching Hospitals [2018] EWCA Civ 978*. Tribunals should ask themselves:
 - (i) 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?
 - (ii) Has he or she affirmed the contract since that act?
 - (iii) If not, was that act (or omission) by itself a repudiatory breach of contract?
 - (iv) 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?
 - (v) Did the employee resign in response (or partly in response) to that breach?
41. It was noted by and approved by Lord Justice Underhill in *Kaur* [paragraph 53], that it was held in *London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493*, [2005] ICR 481, *Logan v Commissioners of Customs and Excise [2003] EWCA Civ 1068*, [2004] ICR 1 and *Lewis v Motorworld Garages Ltd [1986] ICR 157*, all constructive dismissal cases decided by appeal courts, that where it is claimed that the last straw act forms part of a cumulative breach then the previous conduct (in response to which the employee has not resigned) can be taken into account when assessing whether there has been such a breach at the point of the last straw.
42. Mr Wheaton's view was that this could not apply to all alleged incidents no matter how far back they went and he raised this in respect of the two incidents relied upon in 2011 and the incidents concerning GS in 2016/2017.
43. The claimant sets out a list of incidents labelled as breaches of contract in her document entitled 'Breaches of Contract Relied Upon by the Claimant' dated 19 March 2024 but explains in the preamble that she claims that the respondent's actions had the cumulative effect of undermining the implied term of trust and confidence. I understood her case to be just this, that there was a cumulative effect, rather than that any single incident on its own constituted a breach. This is also reflected in the particulars of claim (at paragraph 12) in which she sets out that the treatment she was subjected to by the respondent over time leading to the last straw incident on 6 September 2023 amounted to a repudiatory breach of her contract of employment. I refer below to these incidents as acts rather than breaches to avoid any confusion.

The claimant was asked by Mr Wheaton in cross examination if she would have resigned as a response to the events of 5 and 6 September 2023 had the previous matters relied upon not taken place, and she replied that she did not know, because that was not what had happened.

44. In her closing submissions Ms Sharp states clearly that the earlier acts were breaches in themselves and also contributed to a cumulative course of conduct.
45. The relevance of this is in relation to affirmation. Where there has been a previous repudiatory breach which the claimant has affirmed then she loses the right to terminate her contract for that breach. Only if there is a further act or acts which, when viewed in the context of the earlier breaches will amount to a repudiatory breach, will the right to accept that breach and terminate arise.
46. I agree with Mr Wheaton that generally there must be a point at which the acts relied upon are too distant to be of relevance to a decision to resign. He said that the case law was such that the time elapsing between the first and last acts relied upon was not usually more than a few months or six months at most. The cases he referred to are about affirmation of contract but in my view the historical nature of some of the allegations relied on in this case is relevant to whether it can persuasively be argued that they form part of a continuing series of events.
47. In relation to the two acts complained of in 2011 and the act complained of in 2016, while I have found that all took place as claimed, I do not accept that these form part of a series of continuing events, even when keeping in mind that proximity to the last straw is not the only matter that should be taken into account. They are too distant from each other and the final act complained of. Twelve years elapsed between the first two acts and the final straw act. Five years between the first two and the third act, seven years between the third and the final straw act. These are separate events and not a cumulative series of acts. No complaint was raised in respect of the 2011 events at the time or subsequently. In relation to the 2016/2017 act the claimant supported the respondent in its defence of a claim made against it by an employee, and again there is no indication that she raised any complaint with the respondent. By this time she had been employed for seven years by the respondent and was less junior and more experienced. In applying the guidance in *Kaur* then I have focused on the remaining acts, and the relevance of these earlier acts, all of which I accept took place, has been to any consideration of credibility.
48. The remaining acts complained of, as raised at the hearing, in headlines, are as follows:

Act four – the renting of unit P1 in July 2022.

Act five – Mr Dunderdale asking the directors to loan money to the company in early 2023.

Act six – Mr Dunderdale going back on his agreement to allow the directors 24 hours to consider and action redundancies on 26 and 27 June 2023.

Act seven – Mr Dunderdale referring to staff who worked from home as ‘lazy twats’. No date is given but I take this to be post Covid so 2021 onwards.

Act eight – Mr Dunderdale’s email of 5 September 2023.

Act nine – Mr Dunderdale’s comments made in the meeting of 6 September 2023.

49. The last straw act relied upon is the meeting with Mr Dunderdale on 6 September. The reason for this meeting was that the claimant wished to make known her distress about the email he sent to the directors on 5 September 2023 which she perceived to be a personal humiliation in front of colleagues as the subject matter was a criticism of her plans to take holiday the following week and the plans she had put in place for cover during that holiday. Rather than being sympathetic to her distress at being humiliated by this email Mr Dunderdale confirmed that he believed that her actions were irresponsible and that she was not committed to the business.
50. The case has been put so that the acts on 5 and 6 September are distinguished from each other where in fact they are inextricably linked. I have however considered the case as put.
51. The claimant verbally resigned at the meeting on 6 September and immediately after confirmed her resignation in writing before leaving the respondent’s premises. There was no delay, and she clearly accepted the breach.
52. I then need to consider whether the final straw act was by itself a repudiatory breach of contract. The act was a series of comments made in the meeting of 6 September 2023 by Mr Dunderdale to the claimant to the effect that she was irresponsible, uncommitted to the business and his email of 5 September 2023 had been sent to test her commitment.
53. I find that in sending an email to a group of senior managers in which the claimant is undoubtedly implicitly criticised for her holiday plans and then confirming in the meeting of 6 September that this was a test of the claimant’s commitment to the business and that she was not committed to the business, that Mr Dunderdale had, without reasonable and proper cause conducted himself in a manner that was calculated to destroy or damage the relationship of trust and confidence between the employer and employee. There were other ways in which the matter could have been dealt with without humiliating the claimant and he chose not to pursue those. He must have known that in humiliating her he was likely to seriously damage their relationship and in the meeting of 6 September he did not apologise or explain other than to explain that his actions were intentional.
54. It is my view that the case of constructive unfair dismissal is made out on the ground that the respondent’s actions on 6 September constituted a repudiatory breach of contract which the claimant accepted. However, as the case has been put as a final straw case I have gone on to consider it on that basis in the alternative, i.e. that the act of 6 September was not in itself enough to constitute a repudiatory breach.

55. As noted above I have not had regard to acts one to three in considering the cumulative series of events as I do not accept that they form part of such a series.
56. Act seven is about Mr Dunderdale's attitude to people working from home and while it may be reflective of Mr Dunderdale's behaviour in work I do not put much weight on it in terms of any undermining of the working relationship between the claimant and Mr Dunderdale.
57. I find that acts four and six do clearly evidence a disrespect by Mr Dunderdale towards the directors, of which the claimant was one, and I agree that his actions were undermining and humiliating. Act four was about unit P1. The directors did not think that unit P1 was a good use of company funds. Mr Dunderdale disagreed and proceeded to rent the unit. The complaint of the claimant is that the unit was for the purpose of storing Mr Dunderdale's classic cars and that in ignoring the collective views of the directors she felt humiliated and undermined. The cars were stored in P1. In evidence Mr Dunderdale said that the cars were company assets, also that that was not the primary purpose of the unit P1. The cars being company assets was not something shared with claimant before this hearing. Act six concerned Mr Dunderdale making staff redundant where he had agreed to allow the directors to consider who should be chosen for redundancy and carry that out.
58. Mr Wheaton said that these were business decisions which, as the sole owner of the business, Mr Dunderdale had the right to make. I agree that he would and should have the final say but that is not the complaint raised. It was clear that in relation to act 4 Mr Dunderdale had financial knowledge to which the directors were not privy and had made a decision taking into account factors which he had not discussed with them. This case is very light on papers as it seems that despite there being at least weekly directors meeting, no-one present took notes. However, it was clear from the claimant's evidence that the directors believed that they had a good case as to why P1 should not be rented and they had been overruled without explanation. It was not Mr Dunderdale's evidence that he had explained his reasoning at the time.
59. In relation to act 6, Mr Dunderdale announced at short notice that three members of staff would need to be made redundant. The directors were concerned about business continuity and the workload being covered and asked for a 24 hour grace period. Mr Dunderdale agreed to this then changed his mind without informing the directors, selected the three staff for redundancy and informed two of them before the claimant arrived at work on 27 June. Mr Dunderdale's evidence was that in the small hours of the morning he had decided this was an unpleasant task best carried out by him.
60. I find that in both of these incidents and particular in relation to act six, Mr Dunderdale's actions evidence a lack of confidence in and respect towards his directors. The actions display a disregard for the directors' professional

abilities and an absence of any consideration as to how matters could be approached differently, i.e. where he had come to a different conclusion to his directors, explaining his reasons for that and negotiating a path to implementing his decisions. The claimant says that these acts were humiliating and undermining of her relationship with the respondent and I accept that.

61. Act five is asking the directors to loan money to the company. The claimant says that this was unreasonable behaviour and undermined trust and confidence. Mr Dunderdale said it was a reasonable question to ask in the circumstances and when it was refused the subject was dropped. That is not entirely correct as Mr Dunderdale later raised it in his email dated 26 February 2023. In my view it is the raising of the matter in that email which was undermining and unreasonable but that is not the way the case is put and I have not put much weight on this allegation.
62. The remaining act is act eight which is the email of 5 September 2023, the email which precipitated the last straw act on 6 September 2023. Mr Dunderdale knew the claimant was going on holiday on 11 September. He had been reminded of this on at least three occasions in August 2023 and had been present at discussions about cover for the claimant's department in her absence in the knowledge that the two senior project managers had resigned. It appears that it only occurred to him on or around 5 September 2023 that the cover may be insufficient. Rather than address this with the claimant in person, by phone, or by email he sent an angry and aggressive email to all directors about the claimant's holiday, stating that he had only then become aware of the cover plans. This act is clearly humiliating to the claimant, who was the person taking leave and undermining in that rather than address any concerns he had about cover with her directly, he simply told all of the directors in no uncertain terms that the plans were not good enough and demanded an explanation. This was entirely unnecessary.
63. I find that the respondent's actions in July 2022 in overruling the directors and hiring unit P1 without explanation, on 27 June 2023 in breaching his agreement with the directors to hold off on redundancies for 24 hours, and on 5 September 2023 in sending an angry and aggressive email to the directors about the claimant's holiday, constitute a cumulative series of events that, together with the final straw act on 6 September 2023 in saying to the claimant, amongst other things, that she was not committed to the business, amount to a breach of the implied duty of trust and confidence between employer and employee for the purposes of the *Malik* definition. All breaches of the implied term are fundamental and repudiatory. The claimant accepted the breach, as she was entitled to do so, and without delay.
64. Mr Wheaton, referring to the claimant's resignation letter, suggested that she resigned only in response to the email of 5 September 2023 and put to the claimant that she simply did not like being criticised, which she denied. I do not accept that submission. When asked the claimant said that she was unsure as to whether she would have resigned over the final straw act alone and she answered that she did not know, as the other events had happened.

It is clear from this that the impact of the other acts was a factor in her acceptance of the breach.

65. For these reasons the claimant's claim that she was constructively unfairly dismissed is upheld.

Employment Judge Anderson

Date: 21 November 2024

Sent to the parties on: 4/1/2025

For Employment Tribunal

N Gotecha