

Appeal No. UKEAT/0022/19/LA

EMPLOYMENT APPEAL TRIBUNAL
ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 20 September 2019

Before

HER HONOUR JUDGE KATHERINE TUCKER

(SITTING ALONE)

MS E BUTCHER

APPELLANT

SURREY COUNTY COUNCIL

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MS ELIZABETH BUTCHER
(Appellant in Person)

For the Respondent

MR GARY SELF
(of Counsel)
Instructed by:
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SUMMARY

UNFAIR DISMISSAL – Dismissal/ambiguous resignation

UNFAIR DISMISSAL – Constructive dismissal

The case involved an unusual situation where an employee had given formal notice of resignation following, from her perception, bullying and difficult behaviour by an employee she managed. Some evidence suggested that thereafter the Respondent asked the Claimant to stay on in employment and that she did so, on condition that the other employee's conduct was addressed. Her resignation was not formally withdrawn. Staff changed within the Respondent. The date upon which the resignation was to take effect came and went. The Claimant asserted that she assumed that she was staying in employment and that the resignation had been halted or 'paused'. Almost a month thereafter the Respondent addressed her employment status and determined that she had resigned on notice and that she must leave employment. The Claimant asserted that the EJ had erred in its analysis of the termination of employment; assumed that resignation could only be withdrawn where the requisite agreement was initiated by the employee rather than employee or employer; erred in requiring a resignation be withdrawn by express words only rather than by way of conduct or implication; erred in focussing too heavily on the employer's apparent errors in not progressing the resignation and failing to consider all matters, particularly how, objectively, the Respondent's actions appeared to the Claimant.

The appeal was allowed and the matter was remitted to a differently constituted Tribunal. The Employment Judge had failed to engage with key issues about what, precisely, was said between the Claimant and others following the resignation. Without making those important determinations the Tribunal then fell into the errors articulated by the Claimant in the revised grounds of appeal.

A **HER HONOUR JUDGE KATHERINE TUCKER**

B 1. This is an appeal against a decision of Employment Judge Vowles sitting in Reading
Employment Tribunal (“the ET”). The Reserved Judgment and Reasons were sent to the
parties on 31 August 2018. One matter that Judge Vowles had decided was that the Claimant
had resigned from her employment, and further, that she had not been constructively unfairly
dismissed. It is the first of those two matters which is the subject matter of this appeal.

C 2. At the appeal hearing the Claimant represented herself. The Respondent was
represented by Mr Self of counsel. That had been the representation before the Employment
D Tribunal.

The facts

E 3. The Claimant worked for the Respondent Local Authority in adult safeguarding as the
Surrey Safeguarding Adults Board Member. She line-managed another member of staff, who
was known as, and referred to in the Judgment as, Employee A. Employee A and the Claimant
had a difficult relationship, and it had become increasingly apparent that there were problems
F within it by the early part of 2017. Attempts were made to manage that relationship, albeit it
seems without significant HR involvement. A facilitated meeting took place on 10 April 2017.
That was not successful.

G 4. The Claimant then took a period of sick leave. However, on 11 April 2017 she sent a
measured email to HR which was in the following terms, (this extract is from the Tribunal
H Judgment)

“13....

A *I didn't get any feeling at yesterday's meeting that [Employee A] sees any reason to change her behaviour. If anything, the only thing achieved was a demonstration that I can't do anything about it and I felt both she and her representative attending the meeting intending to up the ante rather than to reach an agreed way of working together. As a manager and a team member, this leaves me with few options. I'll consider these over the next few days and hope to be back in work next week with some solution."*

B 5. On 12 April 2017, although the Claimant did not know this, Employee A submitted a formal grievance against the Claimant. Easter weekend took place over the 14th to 17th April 2017. On her return to work on 18 April 2017, the Claimant handed in a written letter of resignation in which she gave three months' notice, due to expire on 18 July 2017. That letter
C itself was unequivocal. Although the letter itself made no mention of the reasons for the resignation, but it appeared to be agreed by all parties before the Tribunal that the reality was that the reason that the Claimant had decided to resign was because of the difficulties with
D Employee A, and, from the Claimant's perspective, the abuse that she felt she had suffered at the hands of Employee A.

E 6. The evidence before the Tribunal from the Claimant included the following, from paragraphs 36 and 37 of her written statement:

"36. After I handed in my notice, there were some discussions between Simon Turpitt (Independent Chair of the Board), myself and Louise Lamb....."

F [Louise Lamb was a member of HR and managed the Claimant. Simon Turpitt was the Chair of the Board that the Claimant sat on, but he had no express management responsibilities for the Claimant and was independent of the Respondent.]

G *"36.... I made it clear in the discussions that the reason I was going was because I could not take the abuse from [Employee A] anymore. Both Simon and Louise asked me to reconsider, saying that they would like to keep me if possible, however, it was my decision. I agreed to stay so long as the abuse was dealt with."*

H *37. All of this was dealt with in discussions and not put in writing. It was at a time where there was a lot of talking and I was still feeling fragile from what I had been through. There was nothing put in writing from the above parties about the withdrawal, however, if the resignation had not been withdrawn there would have been other activities taking place. This would include Louise identifying my leaving date which would have to be within 3 months minus any annual leave. No such activities took place and I believe the respondents were wanting me to stay. Nothing was said or done to the contrary."*

A 7. The role of Simon Turpitt was explained in evidence from Ms Louise Lamb. Paragraph two of her statement explains that:

B **“The [Claimant] was the manager of the Surrey Safeguarding Adults Board known as (SSAB). SSAB is a partnership of different organisations working to protect adults across the county. It was chaired by Simon Turpitt who was not an employee of the [Respondent] council. Day to day Liz worked closely with Simon but under typical matrix management arrangements I retained line management responsibilities for her as her manager within the Council.”**

C 8. The Respondent had expected to call Louise Lamb, from whose statement I have just read, as a witness. Her evidence was obtained at a relatively late stage of preparation for the case. Shortly before the hearing Louise Lamb notified the Respondent that she was not able to attend the hearing. She had, by that stage, left the Respondent’s employment. On the day of the hearing the Respondent applied to adjourn the hearing. The hearing itself took place on 29 **D** June 2018. The Claimant has told me today that had it been adjourned it would have been re-listed in April 2019. The Claimant stated that she did not wish that to occur.

E 9. In submissions today, the Respondent explained that they sought to take a pragmatic approach. It appears that what had then occurred was that there was discussion about the extent of the dispute between the parties, particularly as regards Ms Lamb’s evidence. Ms Lamb’s **F** evidence included the following paragraphs. First, at paragraph 6 she stated that:

“6. On receipt [of the Claimant’s resignation] I spoke to her [that is the Claimant], to check whether she wanted me to action this but I was satisfied that she had made a considered decision and did wish to proceed”.

G At paragraphs 8 – 9 she stated:

“I had two subsequent conversations with Simon Turpitt. He was keen not to lose Liz as manager of the SSAB. We discussed Liz’s situation, but I advised Simon that I couldn’t predict the outcome of the grievance which had caused Liz to tender her notice. Simon said that he would talk further with Liz himself.”

H Paragraph 9:

“My impression was that Simon hoped Liz might be persuaded to stay if Employee A’s grievance was dismissed and she was exonerated.”

A Paragraph 10 provided as follows:

“I am very clear however that subsequent to either of these conversations, I never discussed or agreed with Liz that she would withdraw her notice, nor did I have any agreement with her that her resignation would be held in abeyance until the grievance was resolved.”

B Her statement continued at paragraph 11:

“When I left the Council on 15 May 2017 it was my belief that the resignation was proceeding and that Liz would be leaving the Council’s employment in mid-July when her notice expired.”

C Paragraph 12:

“I met with Clement Guerin on my last day and briefed him generally; as part of that briefing I advised him that Liz had resigned and would be leaving.”

D 10. The copy of Louise Lamb’s statement in the appeal bundle is not signed, but I was told that a signed copy was before the Tribunal.

E 11. As I have already set out, Louise Lamb did not attend the Tribunal and did not give oral evidence. It appears that a concession was made by the Claimant at the hearing when the parties sought to narrow the issues and to determine whether postponing the hearing could be avoided. The Employment Judge records that concession in the following terms:

F **“7. The Claimant continued to assert that she did discuss withdrawal of her resignation with Ms Lamb, there was never an actual withdrawal of it by her or any agreement between them that it would be held in abeyance. However, she was clear there was a discussion about it.**

G **8. Upon hearing this clarification, that the only issue between them was whether there was a discussion about withdrawal and the Claimant accepted there was no actual withdrawal agreement or any agreement to hold the resignation in abeyance, the Respondent withdrew the application for postponement and agreed to proceed with the hearing in the absence of Ms Lamb on the basis that the Tribunal would accept the evidence of Ms Lamb’s statement apart from the dispute regarding “discussion” by the Claimant.”**

H As I understand the way of the decision is written the agreement was, therefore, that no weight would be put on paragraph 10 of Ms Lamb’s statement.

A 12. When considering that concession it is important to note a number of points. First, that
the Claimant represented herself. In submissions to me today she agreed that she made a
B concession and she explained that she did not seek to resile from it. However, she did not
accept the expression that it was ‘freely’ given, given the relevant background: the result of not
managing to reach an agreement about it was, as she understood the position, an adjournment of
some eight months. Secondly, the Claimant did not accept the formulation of her concession
set out in paragraph seven of the Employment Judge’s reasoning. Thirdly, it is also important,
C particularly when there a concession is made when a party represents themselves, to have
regard to other parts of the Claimant’s evidence.

D 13. The Claimant’s evidence before the Tribunal included the following important
paragraphs. Paragraph 30 stated as follows:

E **“30. After the meeting [that was the meeting between herself and Employee A], I went home. I was in an awful state. I was unable to sleep that night. I was in a constant state of anxiety. The next morning I could not go into work. I sent an email to Louise detailing why I was unfit for work. She phoned me and I briefly discussed it with her. The only reason I was off sick was because of the abuse from Tracy and my sick leave was recorded as stress-related sick leave. There could be no doubt in anyone’s mind as to why I was off sick. This is the only time I have ever had stress related sick leave and I have been in employment since 1988.”**

F 14. Paragraph 32 stated as follows:

“On the next working day after my sick leave I handed in my notice. The resignation letter does not refer to the abuse because I wanted to maximise the chance of getting a good reference and I believed if I referred to the abuse it would give my employer an opportunity to write a poor reference such as saying I could not handle challenges or get on with people.”

G I have already set out paragraphs 36 and 37 of her statement of evidence at paragraph 6 above.

H 15. The Claimant’s account was that between, Ms Lamb, Mr Turpitt and herself, an
understanding or agreement was reached that she would stay if the abuse was dealt with. Her
evidence was that she was asked to consider staying in employment, and that having had

A discussions, she agreed that she would, in other words, that her resignation would be conditional or rather her staying would be conditional upon the Respondent dealing with Employee A. The Claimant agrees that discussions were not finalised.

B
C 16. On 2 May 2017 the Claimant had a one-to-one meeting with Louise Lamb. Notes of that meeting included a comment that, “Liz’s potential last day is 1 July 2017.” Louise Lamb left the Respondent’s employment on 15 May 2017. That appears to have been an abrupt departure. She had a short one-hour handover with Mr Clement Guerin who took over her role.

D 17. The Claimant did not know about Employee A’s grievance until after she had lodged her resignation.

E 18. Mr Guerin’s evidence to the Tribunal was that he was told that the Claimant had resigned, and also that the grievance process was ongoing. His evidence was that he assumed that paperwork had been completed about the Claimant’s resignation, and that there was nothing more for him to do. In fact, all agree that that did not take place and that Ms Lamb had not taken steps to process the Claimant’s resignation or the Claimant leaving.

F
G 19. From the submissions made today, it appears to be clear that there was no evidence before the Tribunal as to why those steps were not taken. Ms Lamb’s statement was silent on that point, and Mr Guerin’s statement was simply that he assumed that paperwork had been completed.

H 20. On 22 May 2017, the Claimant had a review appraisal with an Area Director, Brian Mayers. Mr Mayers was not called to give evidence. A document was completed following

A that meeting. That contained objectives which had been agreed between Mr Mayers and the
Claimant for the following year. In a subsequent version of that document there was a note
B included on it that the Claimant had told him, that is Mr Mayers, that she had resigned and
would be leaving. The Claimant disputed that in her evidence before the Tribunal. Today,
again through submissions, it has been clarified that that subsequent version of the document
was only created in November 2017, and that the document completed almost
C contemporaneously or at the time of the appraisal was the version that was in the appeal bundle.
That did not contain the disputed statement that the Claimant had told Mr Mayers that she was
leaving. Furthermore, the Claimant's witness statement firmly asserted that no such comment
was made during that meeting, but does give another account of a subsequent meeting when
D they bumped into one another in the corridor, and she had then informed Mr Mayers that
although she had resigned that that resignation had been withdrawn.

E 21. The grievance that Employee A had lodged was investigated by a manager Teresa
Hawkins. In notes of a meeting Ms Hawkins had with the Claimant, Ms Hawkins had noted
that the Claimant had stated that she would have resigned and would be leaving in mid-July.
The Claimant gave an explanation for why she said that, both in submissions today and also it
F would appear from the Employment Judge's notes on a review that an account was given
during the course of the hearing.

G 22. On 22 June 2017 Mr Guerin was asked by HR about the Claimant's position. He was
informed that documents had not been completed. He stated that he would meet with the
Claimant to help him establish what the situation was. His statement included at paragraph 13
H the following passage:

"13. On 22 June 2017 I was contacted by email by Daryle Lowden, a Senior Human Resources Advisor for Surrey County Council, as it had come to his attention that the expected form to commence the leaving process when a person has resigned had not

A **been completed. I had not been aware of this before then. I wasn't really sure about the position and had not been involved and so I told Daryle that I would meet with the Claimant to clarify."**

23. The email that Mr Guerin sent was at page 151 of the appeal bundle. It is dated 22 June 2017 and it states as follows:

"Dear Daryle,

Thanks for your email. I've only recently come in to post and I'm a little unclear on some this as it seems to not be a straightforward situation. I think Liz may have withdrawn her resignation - is there anything on her HR file to show this? I can follow up with her to clarify, but that might not be until sometime next week."

C

24. The Claimant drew attention to this email in the submissions she made today. She stated that it was important to note that, evidentially, the first time that the issue of withdrawing the resignation had been raised by the Respondent was in this email from Mr Guerin. There was no evidence before the Tribunal, as I understand the position, as to how he came by the knowledge or belief that the Claimant may have withdrawn her resignation.

D

E

25. The Claimant and Mr Guerin subsequently met on 28 June. Mr Guerin emailed Daryle Lowden about the meeting. He recorded that which the Claimant said as follows:

"...

She notified Louise Lamb (my predecessor) of her resignation either 18th March or 18th April [I believe it is agreed now that that was 18 April] - she couldn't remember which but thought it more likely to be April.

She had a subsequent discussion with Louise Lamb and with Simon Turpitt (Chair of Surrey Safeguarding Adults Board) at which she says it was decided that her resignation would not be effected until after the outcome of the grievance against her was known. She can't recall the date of this meeting and does not have a record of it.

....."

G

He stated that he had asked the Claimant to try and produce any relevant correspondence. He noted that it would be useful to, "get some clarity on this".

H

26. The Claimant emailed Mr Guerin as follows:

A

“Hi Clement,

We discussed my resignation letter today and you asked me to send you a copy of it. Please find this attached. I handed this to Louise Lamb at a meeting on 18 April. Later that day I was in contact with Simon (Turpitt) and we discussed why I wanted to leave, which relates to a specific circumstance. At the end of that discussion he said he would speak with Louise and see if the issue could be resolved as he was reluctant to have to go through a recruitment process if they were able to avoid it. I confirmed that if a resolution could be achieved then I would be willing to stay.

B

I haven't heard anything further from anyone and I assumed it to be 'paused' whilst other conversations were happening. As Louise moved on unexpectedly quickly it was not possible for me to discuss it with her more recently.

...”

C

27. Surprisingly, nothing then happened. The 18 July 2017, that is the date on which the Claimant's notice was due to expire, came and went. The Claimant kept working for the Respondent, and the Respondent kept paying her.

D

28. It was only on 4 August 2017 that the Respondent informed the Claimant, through a brief meeting between her and Mr Guerin, that it was taking HR and legal advice about whether or not to agree to the retraction of her resignation.

E

29. Mr Guerin's evidence was that after that brief meeting he decided that the retraction had not been agreed to, and that, as the resignation date had now passed, the Respondent and the Claimant should agree a new date upon which the notice period would end.

F

30. As the Tribunal Judge noted, the authorities are clear that if resignation notice is effective it is not open to the parties to subsequently alter the termination date.

G

The Judgment

H

31. I turn now to the Judgment itself. As I have already outlined, it recorded the concession (see above at paragraph 11) and parts of Ms Lamb's and the Claimant's evidence in the opening paragraphs. Its conclusions can be found interspersed within some of the analysis of the facts.

A However, importantly, at paragraph 18 the Judge noted that Ms Lamb and the Claimant had a
one-to-one meeting on 2 May 2017, and that the records showed that the Claimant's potential
last day at work would be 1 July 2017 because she wanted to take accrued leave at the end of
B her employment. Paragraph 19 noted that the observations recorded within the minutes of the
meeting with Teresa Hawkins, although the evidence that the Claimant gave about why she had
not amended those minutes was not referred to. At paragraph 20, the Judge recorded that Ms
C Lamb had resigned at short notice and was replaced by Mr Guerin and that they had a brief
handover during which Mr Guerin was told about the dispute between the Claimant and
Employee A, and that the Claimant had resigned.

D 32. The Judgment recorded the finding that Mr Guerin assumed that any necessary
paperwork in respect of the resignation had been completed, and that no action was required by
him. It also referred to the Claimant's appraisal undertaken by Brian Mayers and the note that
E the Claimant had made the decision to leave the Council. However, no reference was made to
the duplicate set of notes, which clearly did exist because of the comments in the
Reconsideration Decision, nor to the evidence of the Claimant about the statement there
recorded. The Judgment did not record the fact that Mr Mayers did not give oral evidence
F about what he had recorded there, and that the Claimant disputed that that had been said at the
time, and that she did give evidence about that matter.

G 33. Paragraph 37 of the Judgment provided that:

"In this case, the Claimant did not leave on the expiry of her notice, 18 July 2017, but her service overran due to errors by the Respondent. There was a failure to complete the necessary paperwork upon the Claimant's resignation because Ms Lamb left abruptly. The handover with Mr Guerin was brief and inadequate and he failed to make necessary and timely enquiries about the Claimant's resignation and her due leaving date." [Emphasis added.]

H

A 34. I pause note that, as I have already commented, there appeared to be no evidence before
the Tribunal upon which it could properly conclude that the necessary paperwork was not
B completed because Ms Lamb left abruptly. That was not asserted in Ms Lamb’s statement, in
Mr Guerin’s. Furthermore, that statement was in direct opposition to the Claimant’s case that
the fact that the paperwork had not been completed supported her contention that her
resignation process was paused to see if the difficulties with Employee A could be addressed.

C 35. The Tribunal found as a fact that:

“...the Claimant unequivocally resigned on notice by letter on 18 April 2017. The notice period given was three months and therefore the effective date of termination was 18 July 2017. The Claimant accepted that there was no agreement to withdraw or pause the notice, although she continued to assert that there were discussions about it. Her acceptance of that position was consistent with her comments to Teresa Hawkins on 17 May 2017 and her comments to Brian Mayers on 22 May 2017. “

D Again, I note that there was no analysis within the Judgment of the Claimant’s account as to
why she did not alter the notes on 17 May 2017. Furthermore, when evaluating the evidence,
E the Judge did not engage with the fact that there were two documents created after the appraisal
with Brian Mayers, that one was said to have been prepared almost contemporaneously, the
other many months later, and furthermore that Brian Mayers did not give evidence and the
F Claimant did and her evidence was that she had not said those words.

36. At paragraph 43 the Judge recorded:

“As found above, there was no withdrawal of the resignation in this case, much less agreement by the employer to withdraw. The Tribunal therefore found, as a matter of fact in law, that the effective date of termination was 18 July 2017. The retrospective agreement between Mr Guerin and the Claimant on 11 August 2017 regarding a termination date in September 2017 was of no effect. The employment had already terminated. Nor could there be any express dismissal after 18 July 2017 because the employment had already terminated.”

H 37. The Judge then went on to address an issue which went to jurisdiction, namely whether,
in the light of that finding, the claim was lodged in time, without allowing either party an

A opportunity to address that in submissions. This appeal does not turn on that issue, but I do use
this appeal as an occasion to remind ETs of the importance of always allowing parties the
opportunity to make submissions on significant matters such as a time or jurisdiction point.

B *The law*

C 38. There was agreement regarding a number of the propositions of law relevant to this
case. First, it was agreed that once notice of termination of employment or resignation has been
D given, it cannot be unilaterally withdrawn or varied other than by agreement between the
parties. Secondly, that the effective date of termination is a matter of statute as set out in the
Employment Rights Act 1996 (“ERA”). Thirdly, that an agreement as to variation or
E withdrawal of a notice of termination can either be an express agreement in writing or verbal or
it can be implied by conduct or indeed, by a mixture of both writing and conduct. Finally, it
was agreed that a resignation could be withdrawn as a matter of law by agreement initiated by
either employee or employer.

F 39. The joint list of authorities included the following cases: **TB Turbos v Davies**
UKEAT/0231/04, **Wallace v Labrokes Betting and Gaming Limited** UKEAT/0168/15, **TBA**
Industrial Products Limited v Morland [1982] ICR 686, **Mowlem Northern Ltd v Watson**
[1990] ICR 751, **D Horwood v Lincolnshire County Council** UKEAT/0462/11, **D Walker-**
Smith v Perrys Motor Sales Ltd UKEAT/0252/17. Although I have considered each of those
G cases, I noted that none of the factual situations within them were precisely like the one in the
present case, although the facts of **Mowlem Northern Ltd v Watson** perhaps came closest. In
that case an employee was given notice of dismissal by a reason of redundancy. The
Respondent was keen not to lose him because he was a skilled and valued employee. There
H was an understanding of an arrangement between him and the Respondent that he would carry

A on working for the Respondent on a temporary basis, at a different site, further away from his
home, and if, as the Respondent company hoped, a new contract was concluded with a
B particular client, he would be offered a permanent position there, but if that contract did not
materialise, he would be free to leave, and not forfeit his redundancy payment. Nothing was
put into writing. The employee did work at the other site for a period of time, but, as there was
no contract agreed as the employer had hoped, he left and took a job with another firm. The
employers however refused to pay him a redundancy payment on the grounds that the
C subsequent and actual termination of employment was not by reason of redundancy.

D 40. The Employment Appeal Tribunal held that once an employee has been given notice of
redundancy to take effect on a specified date, there is nothing in the statute to preclude the
employer/employee from postponing that date by mutual agreement until the happening of an
agreed event. The effective date can be put back by mutual agreement, but the dismissal by
E reason of redundancy remains.

F 41. The facts of that case, of course, were not identical to this one. This case is an unusual
case. However, the common theme in both cases was that in both of them there was, at least, a
contention that continued employment was contingent upon a future event.

The Grounds of Appeal

G 42. This appeal was considered at a Preliminary Hearing at which three amended grounds of
appeal were permitted to proceed. At that Preliminary Hearing the Claimant had had the
assistance of counsel through the ELAAS scheme. The grounds of appeal which have
H proceeded to a full hearing were as follows:

A (i) Ground 1: the Tribunal erred in its approach to what was required for there to be a withdrawal of notice on resignation. It considered that the resignation could only be withdrawn where the requisite agreement was initiated by the employee rather than
B by either party.

(ii) Ground 2: The second ground of appeal was that the Tribunal erred in requiring a resignation be withdrawn by express words only, rather than by way of conduct or implication.

C (iii) Ground 3: The Tribunal erred in focusing too heavily on the Respondent's apparent errors in failing to progress the Claimant's termination and failed to consider matters in the round taking into account all of the circumstances. In particular, it wrongly
D focused on the reasons for the employer's conduct and thus its subjective intent rather than the effect its conduct could have had on a reasonable person in the position of the Claimant who would not have known of those reasons.

E *Submissions*

43. The Claimant submitted that if, as in this case, discussion regarding withdrawal of resignation is initiated by the Respondent, that is a relevant fact which must be properly
F considered when reaching a conclusion. Here, in her submission she was asked to reconsider her resignation; she said that she would and that she would stay if the abuse could be sorted. To her mind that occurred in April or May 2017, once Employee A was managed by someone else
G and was working elsewhere, and difficulties between Employee A and that new line manager made the Claimant believe that something would either have to be done about it or Employee A may not stay in employment. The Claimant submitted that the Tribunal had failed to focus on the significance of the withdrawal having been initiated by the Respondent. Secondly, the
H Claimant submitted that the Tribunal was erred because it only looked for express agreement,

A and did not take into account all of the factual events that I have set out above. Thirdly, and
closely linked to her second submission, the Claimant submitted that the Tribunal failed to
consider whether, objectively, there was an agreement to extend the notice period or to
B withdraw the resignation, reached by conduct.

44. The Respondent made brief but clearly articulated and relevant submissions. The
Respondent drew my attention to the fact that the resignation in this case was unequivocal and
C that the law is very clear that a resignation on notice once given, takes effect in the absence of
any agreement that it should not do so. In the Respondent's submission, in this case, as
conceded by the Claimant, there was no express agreement that the resignation should be
D withdrawn. At its highest, the Claimant's case was that there was evidence of discussions
taking place and that the matter was being looked at but that no agreement was reached. The
Respondent's case was that the Claimant's concession, once made, was, in essence, fatal to her
E case.

Analysis and conclusions

45. Sufficiently I shall allow the appeal. In summary, I consider that, in error, the Tribunal
F failed to engage with relevant evidence as to disputed key issues. Consequently, it could not
properly make decisions about important factual matters and then decide upon the real issues in
this case. There were no findings made about the evidence before the Tribunal regarding the
G conversations which took place either on the day of, or shortly after, the Claimant handed in her
resignation and communicated it to the Respondent. It appears from the documents I have seen
that there was evidence before the Tribunal that there were, at least discussions, and further,
H that there was a desire to retain the Claimant in employment. That was the case positively
advanced by the Claimant. It appears to have been supported by at least some of the

A Respondent's evidence. Certainly, the Judge made no express finding rejecting the Claimant's account.

B 46. The Tribunal, in my judgement, in order to fairly and properly decide this case needed to have decided what was said by whom and when. I recognise that the resignation was not given in the heat of the moment as in some cases. It was, however, written at a time when the Claimant had been on sick leave after what she had described as a longstanding difficult experience managing someone with whom she had a difficult relationship. That is not the same as a resignation in the heat of the moment but it is, potentially, nonetheless an important and significant aspect of the factual background.

C

D 47. More importantly, however, there are real difficulties, in my judgment, with the analysis that the Tribunal adopted of the evidence before it. First, it reached a conclusion that the relevant paperwork was not completed because Ms Lamb left in a hurry, and did not have time to complete it. That, however, does not appear to have been supported by any evidence. Secondly, the Tribunal did not engage with any of the evidence regarding the discussions about leaving dates, or made any factual determinations about it. Nor did the Tribunal engage with the question of how Mr Guerin was aware that the Claimant may have withdrawn her resignation or make any factual determinations about that matter. It does not set out how or what significance it gave to the word, "potential" when talking about the notes of 2 May 2017, nor does it address the question of the fact that nothing occurred after the expiry of 18 July 2017, by which date the Respondent well knew that the Claimant had maintained that she had withdrawn her resignation.

H

A 48. The first ground of appeal was that the Tribunal erred in its approach to the question of
withdrawal with notice of resignation because it considered that the resignation could only be
B withdrawn when the requisite agreement was initiated by the employee. I do not consider that
it can be fairly said that that is what the Tribunal Judge did. However, I considered that the
Tribunal erred because the Judge did not take into account something which s/he should have
considered when determining the issues: the judge failed to properly consider relevant
C circumstances (about which there was no dispute), namely that the Respondent invited the
Claimant to reconsider her resignation and to stay in employment. I consider that the second
ground of appeal is made out. A fair reading of the Judgment suggests that the Tribunal
approached the case on the basis that the resignation could only be withdrawn by express words
D rather than by conduct or implication. The Tribunal did not consider whether the facts
established that the conduct of the Respondent revealed that, in fact, there had been an implied
agreement that the resignation could be withdrawn. I also consider that the third ground of
appeal is made out. In its approach to the evidence it appears that the Judge focused only on
E selective pieces of evidence regarding the actions of the Respondent, to the exclusion of other
relevant evidence. The Judge did not set out whether, and if so, how other significant and
important aspects had featured in his/her decision making.

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49. For all of those reasons, I consider that the Tribunal erred in law. I allow the appeal and
now need to consider disposal.

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