Case Number: 2501170/2018

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mr A WATSON	**AND**	**JEWSON LIMITED**

REASONS OF THE EMPLOYMENT TRIBUNAL

Held at: **Teesside** **On:** **8 October 2018 and 4 December 2018**

Before: **Employment Judge Beever**

Appearances

For the Claimant: **in person**
For the Respondent: **Mr Perry, Counsel**

JUDGMENT

The claimant's claim for unfair constructive dismissal is not well founded and is dismissed

REASONS

Introduction

1. The claimant appeared in person and Mr Perry represented the respondent. The matter was heard on 8 October 2018 but it was not possible to conclude the case on that date. On 8 October 2018 the claimant gave his evidence and was cross examined. Mr Jones also gave evidence.

2. The resumed hearing took place on 4 December 2018. Evidence and submissions were concluded. Judgement was reserved.

The Issues

3. At the outset of the case, the tribunal outlined the issues that fell to be dealt with. The parties agreed that this was a claim of constructive unfair dismissal and that the claimant was relying on a breach of the implied term of trust and confidence; the final straw for the claimant being a meeting with Mr Farrow on 23 February 2018 and a follow up email suggestive of a pre-determined outcome to his grievance. The tribunal also records that there are a number of historical events and the respondent highlighted its initial position that in terms of constructive dismissal it contends that there has been a "waiver" in respect of those historic issues. However, by the conclusion of the case, the respondent accepted that it was open to the tribunal if the facts justified it to conclude that even historical events may contribute towards a series of events constituting a breach of the implied term.

The Facts

4. The Tribunal heard the claimant's evidence and read his witness statement. He was cross examined by Mr Perry. The respondent relied on witness evidence from Mr Jones, Mr Farrow and Mr Morton, each of whom were cross examined. It also had regard to a 386-page trial bundle and a neutral chronology document prepared by Mr Perry for cross referencing purposes. These are the facts as the tribunal has found them on a balance of probabilities:

    4.1 The claimant worked for the respondent since 4 October 2004 in the role of LGV driver, based at the Bishop Auckland branch of the respondent, a part of the Darlington cluster of branches.

    4.2 The respondent is a national company, employing 7000+ employees in its business of supplying building materials to the building industry through a national network of branches. Typically, each branch had a branch manager in charge who reported to a cluster manager; in turn to an Area Director.

    4.3 The claimant has had significant work-related issues over a period of time. In his chronology of events, he describes a campaign of intimidation and bullying which commenced in 2012 and was a consequence he says of his raising health and safety shortcomings in the workplace.

    4.4 In 2012, the claimant raised a grievance regarding his working arrangements, the outcome of which, on 21 May 2012 (79), included that because of the requirement to do additional hours, the claimant was awarded an increase in salary and was at that point required to work alternate Saturdays. The outcome did not immediately resolve matters as the claimant believed that the respondent had continued to coerce him into signing a new contract. This led to a grievance meeting on 10 July 2012 which eventually achieved a resolution on 16 July 2012 (105) and

new contract of employment issued to the claimant on 18 September 2012 (48).

4.5 Between November 2012 and April 2013, the claimant was subjected to a disciplinary process which emanated from an occasion at work in November 2012 when the claimant had been required to drive a load in what he believed amounted to dangerous conditions. He had raised a grievance because of the fact that his manager, Mr Dawson, had suspended him essentially because of his raising what he saw as legitimate H&S issues. The claimant regarded that as harassment and bullying on the part of Mr Dawson. A number of handwritten statements were taken during the investigation process which the claimant believed and continues to believe were fabricated. The claimant was dissatisfied with the process: a failure to provide documentation; fabrication, as the claimant saw it, of evidence; unjustifiable delays in dealing with the allegations. In the event, the claimant had received a disciplinary warning but the application of the appeal process led to the warning being overturned. The claimant was thus not disciplined. This was 15 April 2013 (186). Nevertheless, the claimant described living "in constant fear" of being instructed to commit further H&S breaches.

4.6 12 months later, on 13 May 2014, the claimant was again suspended on a disciplinary charge (199). The investigation process resulted in a meeting on 23 May 2014. This was held by Mr Morton who agreed in evidence that the claimant had raised a number of allegations of what he believed to be evidence of the respondent ignoring H&S issues. Following on from the meeting, Mr Morton reported back to HR and to his managers that he recommended no case to answer. Mr Morton did all that was expected of him. Surprisingly, on 25 June 2014, the claimant was invited to a disciplinary meeting which was inconsistent with Mr Morton's recommendation. This remains unexplained. The meeting on 27 June 2014 took place, but it is common ground that no disciplinary action resulted.

4.7 There followed a period of time in which the claimant's work environment was improved. The claimant puts this down to the presence of Mr John Deighton who became the claimant's branch manager.

4.8 In May 2016, the claimant was offered a job with a different builders' merchant. He discussed this with Mr Deighton, who clearly wanted to keep the claimant. An agreement was reached for new working hours and a pay rise. The claimant's contractual working pattern became M-F 7.30am to 5pm; he was not required to work on a Saturday (230).

4.9 From the claimant's point of view, the improved work environment reverted to a stressful environment following the departure of Mr Deighton in late 2016. In May 2017, the claimant complained that Mr Hutchinson, the manager at Darlington, had been aggressive. This resulted in an informal grievance but it was one which the claimant believes was "swept under the table" because the branch manager appears to have appointed

Mr Wilson (an area manager) to deal with it; and Mr Wilson was to the claimant's understanding a friend of Mr Hutchinson (234). Having looked into it, Mr Wilson apparently concluded that as Mr Hutchinson had denied the allegation it was in essence one word against another and no further action could be taken. Nothing more came of this.

Saturday working

4.10 By October 2017, the respondent had begun a review of transport capacity for Saturday deliveries in response to customer feedback that suggested that a full service required deliveries on a Saturday morning. This resulted in an exercise in the Darlington cluster that was replicated across other areas. Mr Morton was involved in those discussions as email threads show [237]. By October, it was already apparent to the respondent that the claimant was likely to resist any move towards Saturday working for him. Of course, it was only 12 months previously that he had formalised an agreement to that effect with Mr Deighton. The claimant said in evidence that the situation was open knowledge in the branch including the fact that it was his job under the spotlight.

4.11 The claimant was invited to a meeting. HR wrote on behalf of Mr Morton to the claimant on 6 December 2017 inviting him to a meeting on 15 December 2017. The letter was written following a request by Mr Morton [242] for a meeting which would "review his current working hours & understand why at present he does not work any Saturday shifts at all". The tribunal accepts that Mr Morton did not review the letter before it was sent. That is not surprising in an organisation which has its own dedicated HR team and where, as in Mr Morton's position, he had day to day responsibility for a large number of stores. Regrettably, the letter that was sent has caused a significant amount of stress to the claimant. Whilst the letter is entitled a "Review of working hours at Bishop Auckland", it also contained two express references to redundancy. On any view of the case that was wrong.

4.12 In fact, in the 7-10 days prior to the meeting, a relief driver from Darlington had been placed at Bishop Auckland. According to the claimant, this had not happened before and the claimant saw no legitimate justification for it. Mr Morton however has explained that trade dropped off in the run up to Christmas and the driver in question was sent to his "home" branch (i.e. the one nearest to his home) as there was no need for him elsewhere; this is a decision of a transport manager. Mr Morton insisted that it was a co-incidence of timing. He did not refute the claimant's suggestion that this relief driver replaced the claimant following the claimant's departure in early 2018.

4.13 The tribunal finds that as soon as the claimant received the letter, he informed Mr Cooper, his branch manager. Mr Cooper was surprised at any suggestion that the claimant might be at risk of losing his job. The claimant recalls that Mr Cooper said that he would contact Mr Morton. The claimant also said that it was open knowledge that Mr Cooper had contacted Mr Morton. This was not the first time in evidence that the

claimant has referred to something being "open knowledge" but the tribunal is naturally cautious about reaching findings without clear factual groundwork.

4.14 There is no contemporaneous evidence that Mr Morton found out about the "redundancy" terminology as early as 8 December 2017. What the claimant said in an email on 2 January 2018 (264) was that Mr Cooper raised the claimant's concerns with Mr Morton "at the company conference". That information must only have come from Mr Cooper. The Jewson conference took place on 14 December 2018 (368).

4.15 Mr Morton said that Mr Cooper approached him at the Jewson Conference on 14 December 2017 (368) and informed him about the "redundancy" concern raised by the claimant, and Mr Morton undertook to review the letter that had been sent. Mr Morton said that he thus read the letter for the first time that evening (the evening before the meeting). He realised the problem.

4.16 The tribunal finds that the respondent was made aware by the claimant of this significant error (and the impact on the claimant) as early as 8 December 2018. It finds that the significance of the words were not lost on the claimant and after he received the letter on or about 8 December, he did speak to his branch manager at the first opportunity. Whether it be laid at the door of Mr Cooper or otherwise, the tribunal finds that the respondent failed to respond to the claimant and to allay his fears at any time prior to the meeting. It should have done so; there is no apparent explanation as to why it did not.

4.17 That said, there is no evidence that Mr Morton was aware of the error prior to the evening before the meeting. It was put to him that the error was a deliberate one on his part. It was a "blatant attempt to coerce and pressurise him" into changing his contract terms or a device to pressurise him into leaving. If so, this must have been a deliberate act by Mr Morton.

4.18 The meeting was not postponed, but went ahead on 15 December. The claimant has complained that the meeting should have been postponed. The tribunal notes that the claimant did not at any stage seek to postpone the meeting or ask for an adjournment. The notes are at (251). The meeting began with Mr Morton stating that its purpose was to review working hours on a Saturday. The notes suggest that it was the claimant who then raised the matter of the "cover letter" which mentions redundancy. The claimant characterised this as follows: that Mr Morton had "blanked it and ignored it until I made you face up to it". That nuance is not evident from the notes which suggest that Mr Morton dealt with it at the outset of the meeting once it was raised by the claimant. Mr Morton states that there is "not a redundancy process" and in response to the complaint that the letter was a "bullying tactic, disgusting", Mr Morton repeated that, "regarding the letter, not redundancy and not taking vehicle out, not taking driver out", to which the claimant said, "OK, want this noted". The notes refer to Saturday working as "a proposal at this stage"

but the claimant repeated that he was "bullied and intimidated by the letter".

4.19 It is apparent that the meeting on 15 December was not a decision-making meeting. Mr Morton intended that there should be a "follow-up invite to a meeting to discuss the proposal put to Andrew on 15 December". He asked HR to send out a letter of invitation (257). On this occasion, Mr Morton reviewed the draft letter (256) and on 21 December 2017 the letter of invitation was sent (262). In the body of the letter, once again, Mr Morton apologises in these terms: "I would like to apologise for the miscommunication within the letter dated 6 December. The letter referred to a Redundancy consultation in error which was not and continues not to be proposed". The letter invited the claimant to a follow-up meeting on 3 January 2018.

4.20 In fact the claimant had tendered a fit note to his branch manager on 21 December (261) on grounds of work-related stress. Given the prior email thread and draft letter, the tribunal finds that Mr Morton was unaware of the claimant's sickness absence when he approved the follow-up invitation letter.

4.21 The claimant received the invitation letter on 30 December 2017 (264) and confirmed that he was off sick with work-related stress. In the letter he again addresses the issue of "miscommunication" and that the claimant considered the meeting of 15 December to be a blatant attempt of coercion because the respondent had taken no steps to correct the so-called mistake between 8 December and the meeting taking place on 15 December 2017. It is at this point that his perspective that this is not miscommunication but instead "a deliberate attempt to apply pressure" is verbalised. The claimant asked for a copy of the notes of the 15 December meeting. The claimant also telephoned his branch manager Mr Cooper (266) confirming that he would be off sick for a month (270) and that he "will be going for a tribunal".

4.22 The follow-up meeting on 3 January 2018 was postponed. Although this postponement was communicated to the claimant on 3 January 2018 (272) that was not surprising given the events had only taken place the day before. The letter states that "the company has interpreted your email is a formal complaint within the company's grievance procedure" and proposed a grievance meeting to give the claimant the opportunity to outline his concerns.

4.23 The claimant sent an email dated 8 January 2018 (273). In fact he rejected the proposal for a grievance meeting albeit that he did so for medical reasons so as to avoid "high-pressure situations". In the email he complains that the sending of the letters dated 21 December 2017 and 3 January 2018 to be "slightly aggressive" and repeating his view that the redundancy "miscommunication" was in fact "preconceived unplanned".

4.24 The claimant received a response on 19 January 2018 from Mr Jones (275). The letter explains the grievance process and the fact that the claimant's concerns would not now be progressed down the grievance procedure as per the claimant's request. The tribunal finds that the letter at (275) was a sensible and appropriate attempt to resolve the claimant process concerns particularly in the light of the claimant declining a grievance process. The claimant responded on 20 January 2018 (278) in which he takes issue with a number of points that Mr Jones had raised. He says that "if the company insist on denying any problem" then he would be left with "no option but to seek legal advice as to my future is at the moment the company seems to expect me to return to work under the same manager (Mr Morton, as he is my transport manager) who was tried to coerce me into changing my working pattern with the threat of redundancy…"

4.25 In fact, the claimant appears to have a slight change of heart because (279) he instigated a formal letter of grievance on 25 January 2018. That email was sent to his branch manager at 17.47 hours. On the same day, at 17.54 hours, the claimant emailed his senior manager, Mr Farrow, referring to the fact that he has submitted a formal grievance but that "this is not the route I would like to follow. I was wondering if you would be open to an informal meeting to try to resolve the issue before the need for a grievance and possibly legal action…". (281).

4.26 The meeting was arranged for 2 February 2018 (282). Mr Farrow sent an email to the claimant later the same day (284) outlining a note, "to reiterate how I would like to help you to return to work with us". Mr Farrow apologised once again regarding the letter and further that it had not been amended when the claimant had pointed out the error. Mr Farrow reiterated that there was no plan to make any driver redundant and that he had said, "I need more drivers not less". Mr Farrow also discussed the possibility of providing counselling paid for by the respondent as he was aware that NHS counselling was subject to significant delay. The claimant at that meeting raised the prospect of working elsewhere and the tribunal finds that Mr Farrow discussed the possibility of the claimant in fact staying with the respondent on more flexible terms and reiterated that he "needed more drivers not less and your experiences hard to find". The tribunal finds that Mr Farrow had no axe to grind with the claimant nor any particular agenda and expressed very clear views that he genuinely wished to find a way to assist the claimant not just in terms of his health but also in terms of the prospect of his return to work. There was nothing inappropriate about his updating internally (292). In fact the contemporaneous note at (292) illuminates the difficulty in making findings of fact between two competing recollections. Where, as here, a contemporaneous note exists, the tribunal is assisted in determining what took place. The tribunal notes that in (292) Mr Farrow has provided some detail as to the claimant's experience of PTSD. The claimant has complained about Mr Farrow's wrong assumptions regarding the claimant's health but the tribunal finds that the claimant provided the

information to Mr Farrow that he has had cause to record in his note. He proposed a follow-up meeting.

4.27 Having heard nothing from the claimant, Mr Farrow followed up on 15 February by email (287). The follow-up meeting took place on 23 February 2018. The meeting was informal. No notes were taken during the meeting which was conducive to a more open and informal discussion. Mr Farrow took notes for the purpose of updating internally (290) which he did on the same day; he also wrote to the claimant summarising and confirming next steps (286). The tribunal considers that this email from Mr Farrow to the claimant was both sensible and conciliatory and put forward realistic proposals and alternatives. The Tribunal rejects the characterisation placed on this communication by the claimant. There was nothing inappropriate about the fact that Mr Farrow wrote a detailed note immediately afterwards and there was nothing inappropriate about his communication with the claimant seeking to find a way forward and to give alternatives to the claimant. By now, it is clear (290) that the respondent had offered to support the claimant in paying for counselling but that the claimant rejected the offer on the grounds that he may yet resign his employment.

4.28 During the meeting it is alleged by the claimant that Mr Farrow informed him that if he continued with his grievance then it was unlikely to produce any different outcome. This alleged statement is inconsistent with the approach of Mr Farrow in terms of seeking a positive way forward and encouraging the claimant to return to work. It is also inconsistent with the approach of the respondent who, by 26 February 2018 (295) had concluded that the formal grievance process needed to be instigated. That same day, at 20.30 hours (300), Mr Farrow wrote a further email summarising the meeting of 23 February in which he stated that the meeting had, “revisited the suggested approach that I put forward to help to resolve your current concerns that stemmed from the error of issuing you an incorrect letter”. The letter concluded, “I have always stated our wish is to support you to get back to work, with these two points in mind and as we have not been able to find a solution in our informal meetings I now need to instigate our formal grievance process… where I hope matters can be resolved”.

4.29 At this point in the timeline, the claimant’s position is that the meeting of 23 February and the follow-up email of 26 February “contained a number of inaccuracies, failed to address his concerns and which suggested a formal grievance would result in the same outcome” was “the final straw in a series of unacceptable conduct which amounts to repudiate your breach of the implied term of mutual trust and confidence…”. The tribunal rejects the characterisation of the meeting and the follow-up email that has been placed upon them by the claimant. The tribunal finds that there were no material inaccuracies. The tribunal finds that Mr Farrow had genuinely sought to resolve the claimant’s concerns. The tribunal finds that the claimant has interpreted Mr Farrow’s communications as suggesting to the claimant that a grievance would result in the same outcome. The tribunal

rejects the suggestion by the claimant that Mr Farrow at any point stated to him that a grievance would result in the same outcome. Such words would suggest an attitude which was wholly inconsistent with the manner in which Mr Farrow attempted to conduct matters. The tribunal prefers the evidence of Mr Farrow who identified that it was in fact the words of the claimant that a grievance would result in the same outcome. The tribunal finds this to be the more likely occurrence because it is consistent with the attitude of the claimant who has consistently been unable to accept the repeated apologies of the respondent and remained fixed in his view that Mr Morton had acted in a deliberate manner; and because it is inconsistent with the attitude of Mr Farrow who appeared to tribunal to be open-minded and willing to find a resolution which included retaining the claimant in employment, if only because respondent needed more drivers and especially those with experience.

4.30 The respondent on 26 February (302) invited the claimant to a grievance meeting on 14 March 2018. This was entirely consistent with the claimant's request and in line with the fact that the informal process with Mr Farrow had not borne fruit. There was no culpable delay on the part of the respondent.

4.31 The claimant resigned by letter dated 28 February 2018. The tribunal has reviewed the letter of resignation (304) carefully. The claimant complained of his "recent experience involving the company" in which the threat of redundancy was used to coerce him into changing his agreed working hours. In addition, the claimant complained that having submitted his grievance on 25 January 2018 he had not, as at the date of drafting the letter, even received any acknowledgement reinforcing his view that a grievance meeting would be "a purely cosmetic attempt from the company who have had plenty of time to resolve this". Finally, the claimant pointed out that he has been asking the company for help with stress and that the company has offered no help.

The Law

5. The law relating to constructive dismissal is well settled. See Western Excavating v Sharp. In order for a claimant to succeed, it must be shown:

   5.1 That there was a breach of contract so serious as to entitle an employee to resign from his employment;
   5.2 that resigning was (at least in part – see Wright v North Ayrshire [2014] IRLR 4 - in response to the breach of contract; and
   5.3 that in resigning the claimant did not delay or act otherwise so as to affirm the breach of contract.

6. A claimant who relies on a breach of the implied term of trust and confidence needs to establish conduct which amounts to a breach of an obligation 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

confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462.

7. The focus is on the conduct of the employer. Subjective intention is irrelevant: Leeds Dental Team Ltd v Rose [2014] IRLR 8; it is for the tribunal to assess whether the employer's acts or omissions, when considered objectively, amount to conduct in breach of the term of trust and confidence. That said, there is no rule as to what might or might not be a breach: in Leeds Dental, "the circumstances are so infinitely various that there can be and is no rule of law saying what circumstances justify and what do not", and that "in other words, it is a highly context-specific question".

8. The "last straw" need not be of itself a breach of contract but must when viewed in conjunction with other facts be considered sufficient to warrant the resignation to be treated as a constructive dismissal. Such a last straw might not always be unreasonable but it must be an act in a series whose cumulative effect was to amount to a breach of the implied term and the act must contribute something to the breach: Omilaju v Waltham Forest [2004] EWCA Civ 1493.

9. Mr Perry accepts that if there has been a constructive dismissal, then the dismissal will inevitably be unfair within the meaning of s.98 ERA.

Discussion and Conclusions

10. The claimant and Mr Perry both provided helpful and extensive written submissions and the tribunal has reviewed each and taken both fully into account. Each provided concise oral submissions to supplement those written submissions. Both parties have structured their submissions in a chronological manner. It was logical to do so since the claimant has put forward his case on the basis of what he says, at paragraph 30 of his witness statement, was "a series of unacceptable conduct which amounted to a repudiatory breach of the implied term of mutual trust and confidence"; the "final straw" being relied on by the claimant, at paragraph 30, as the meeting with Mr Farrow on 23 February 2018 and his follow-up email (300).

11. The claimant's employment began in 2004 and on any view his first nine years were uneventful. He described how from 2012 restructuring and a high turnover of managers created a stressful working environment for him. The claimant's grievance against Mr Dawson in 2012 arising from a change to his contract of employment was resolved following the application of the respondent's grievance process. Again, in 2012 a disciplinary process against the claimant resulted in a disciplinary warning being overturned following the application of the respondent's disciplinary appeal process. Tribunal notes that the same manager, Mr Dawson, was involved but that said the outcomes objectively owed more to the applications of the respondent's processes. Nor does Mr Dawson play any material part in subsequent events and he has since left the employ of the respondent.

12. One matter appears unexplained from 2014: following a disciplinary suspension and an ensuing investigation in which it was found that there was no case to answer, nevertheless the claimant faced a disciplinary meeting in June 2014. Although the meeting took place, no disciplinary action resulted. Tribunal notes that the manager who found that there was no case to answer was Mr Morton: this is a relevant feature given the implication of Mr Morton in alleged deliberate conduct adverse to the claimant later in 2017.

13. The tribunal finds that the respondent's dealings with the claimant on matters between 2012 and 2015 were not a breach of contract. The sole shortcoming as the tribunal found in relation to the disciplinary hearing following Mr Morton's view of no case to answer was unexplained but there was insufficient evidence before the tribunal to conclude a fundamental breach occurred bearing in mind that the decision to proceed to a disciplinary hearing is not a matter for the investigator and also it is consistent with a proper application of the respondent's disciplinary process that there was no outcome adverse to the claimant. Further, we find that these issues did not cause the claimant to resign.

14. Following the conclusion of the disciplinary issue in June 2014, save for raising Health and Safety issues in early 2015 where the claimant asserts that nothing was done, the next event of which the claimant raises a complaint is not until May 2017. The intervening period coincided with the management by Mr Deighton and included a new contractual working pattern for the claimant as part of an attempt to retain the claimant in employment with the respondent.

15. The complaint in May 2017 related to a different manager, Mr Hutchinson. The claimant complains that his grievance was "swept under the table" because as he saw it the manager question was a friend of the grievance manager. Objectively, the grievance was investigated informally. The claimant was unable to accept the conclusion of the investigation.

16. Considered objectively, the events between 2012 and May 2017 did not either individually or when taken together constitute conduct by the respondent in breach of the implied term. Further, those implicated in the early events played no material part in the events of late 2017. Regarding the role of Mr Morton, his involvement in 2014 was in fact favourable to the claimant. Equally, the tribunal accepts that despite the historical nature of many of these events, the claimant is entitled to rely on them as part of a series of events which when taken with a "last straw" might be said to constitute a breach of the implied term.

17. The tribunal therefore turns to examine the events commencing from October 2017 in order to examine whether, when taken separately or in conjunction with previous events, they amount to a breach of the implied term.

18. The respondent was engaged in a genuine review of its transport capacity for Saturday deliveries. The respondent needed to operate a fuller delivery service to meet customer expectation. Notwithstanding that the claimant had a contractual entitlement not to work on a Saturday, it was an unsurprising consequence of the review that he might be consulted over a possible change to

his terms and conditions. In short, it was reasonable of the respondent to consult with the claimant about the prospect of him returning to Saturday working.

19. The trigger for the subsequent events ultimately leading to the claimant's resignation was the invitation letter. The letter contained a significant error but not one which Mr Morton had asked for or knew about until the night before the meeting due to be held on 15 December 2017. The error has caused immense distress to the claimant but the tribunal finds that Mr Morton was not aware of the error until told of it by Mr Cooper at the Jewson Conference on 14 December and upon seeing it himself for the first time that night; and Mr Morton was not aware of the distress caused to the claimant until the meeting itself on 15 December 2017. The tribunal rejects the contention that Mr Morton engaged in a deliberate act to ensure that "redundancy" was imported into the letter. The tribunal finds that nothing that Mr Morton had done prior to the meeting can objectively be described as adverse to the claimant let alone deliberately adverse.

20. He did not need to postpone the meeting. It was sensible that it went ahead even in the face of the error as it was an opportunity to set the record straight. At the outset of the meeting, Mr Morton unambiguously asserted that there was no redundancy situation. Mr Morton had in substance corrected the wrong done by the error in the letter. The point was repeated more than once during the course of the meeting. The claimant could have been left in no doubt that there was no longer any intention by the respondent to exert pressure by means of suggesting that his job was at risk. Regrettably, the claimant had become fixed in his view that Mr Morton had acted deliberately. It is difficult to see what more Mr Morton could have done given his clear statement of the true position.

21. The tribunal finds that the respondent's shortcoming was in failing to act on the information that the claimant gave to Mr Cooper immediately on receipt of the invitation letter. The lapse of time covered the period up to the moment at the Jewson conference when Mr Morton was informed; however, the conduct of the respondent when viewed objectively evidences genuine attempts thereafter to set the record straight and provide the claimant with the clearest reassurance that his job was not at risk and the status of the Saturday working was at that stage still a proposal.

22. The letter to the claimant following the meeting (262) is consistent. It evidences the application of the respondent's procedures and is accompanied by a repeated apology by Mr Morton for the error. The letter was requested and drafted and sent at a time when it was not known (save for the claimant's branch manager who was in receipt of a fit note) that the claimant was absence through stress.

23. The communications between the claimant and the respondent between 21 December 2017 and 25 January 2018 do not evidence any conduct on the part of the respondent that was adverse to the claimant. The respondent sought to instigate a grievance process to give the claimant an opportunity to outline his concerns. As the tribunal has found, the letter of 19 January 2018 (275) was sensible and appropriate. The claimant characterises the respondent's

communications over this period of time as a "bombardment": the tribunal firmly rejects that description.

24. Mr Farrow became involved when the claimant requested an informal meeting. That is what took place and objectively it was managed appropriately and in a manner that was conducive to the claimant's being able to express his views and to seek a way forward. There was no part of the meeting of 23 February 2018 that can properly be described as inappropriate. Nor was the follow-up email of 28 February 2018 inappropriate either. The tribunal has found that the follow up email does not contain material inaccuracies; the email does objectively seek to address the claimant's concerns; the email does not objectively convey any suggestion that a formal grievance would result in the same outcome. In fact, it was the opposite in that Mr Farrow's conduct both verbally and in emails indicated a desire to progress his grievance; to allay his concerns; to offer help to the claimant. These were the acts of a supportive and sympathetic manager. The tribunal has found as a fact that it was the claimant not Mr Farrow who used words to the effect that a formal grievance would result in the same outcome.

25. The conduct of the respondent, in particular that of Mr Farrow, in relation to both the meeting of 23 February 2018 and the follow up email of 28 February 2018 was sensible and appropriate. Mr Farrow had been at pains to offer the claimant access to privately fund counselling services to assist him. The claimant rejected that offer because he could not say that he would remain in the respondent's employment. The claimant had by the time of the meeting on 23 February 2018 convinced himself that there was nothing that the respondent could do to remedy the situation.

26. The claimant resigned because he considered that the respondent had tried to coerce him into changing his working hours. The tribunal has rejected any suggestion that the respondent, in particular Mr Morton, had acted deliberately to the disadvantage of the claimant. The error in the letter of 6 December was a significant error. Taken in isolation, it is an error which might have had more serious consequences for the respondent in these proceedings. However, it is inappropriate to view it in isolation: in this instance, the error was inadvertent. There was a short lapse of time in which the respondent did not act to correct the error but the tribunal finds that Mr Cooper had brought it to the attention of Mr Morton properly prior to the meeting. The respondent mitigated the error: it repeatedly apologised and sought to reassure the claimant that there was no redundancy situation. It reacted appropriately. The respondent's error in the letter and the short lapse of time prior to the meeting when the respondent had not acted to correct the error must be seen in the context that the matter was fully in hand by the time of the meeting and thereafter the respondent acted appropriately. The respondent's acts and omissions in this regard were not in breach of contract.

27. The claimant resigned because he had submitted a grievance on 25 January 2018 but had not as at 28 February 2018 received an acknowledgement. This bald assertion fails to take account of the fact that the claimant expressly told Mr Farrow that he did not want to pursue a formal grievance if it was possible instead to seek an informal route. Mr Farrow responded to that invitation and it

was Mr Farrow who initiated the formal process once he had concluded that the informal process would not resolve matters. The respondent acted appropriately and did not unduly delay. The respondent's acts or omissions in this regard were not in breach of contract.

28. The claimant resigned because he considered that the respondent had offered him no help with his stress-related condition. In contrast, when the matter was discussed with Mr Farrow in February 2018 he offered to assist the claimant but the claimant rejected the offer. Whether in fact there had been occasions in the past when the claimant did not obtain assistance from the respondent does not in the tribunal's view have any material relevance by the tie of the events in late 2017 and the claimant had not raised any grievance or formal concern in respect of any earlier shortcomings in the respondent's assistance on medical issues. The respondent's acts or omissions in this regard were not in breach of contract

29. When viewed as a whole, the tribunal finds that the meeting of 23 February 2018 and the follow up email of 28 February taken together or separately do not evidence any conduct on the part of Mr Farrow that could contribute to a finding that the respondent was in breach of the implied term of trust and confidence. These were entirely "innocuous" acts that do not amount to a "last straw". Even if the tribunal was wrong about that, the tribunal concludes that the series of events on which the claimant relies including the events in relation to Saturday working do not whether taken separately or together amount to a breach of contract on the part of the respondent that is serious enough to be a repudiatory breach.

30. The claimant resigned his employment. He was not entitled to do so by reason of any breach on the part of the respondent. Accordingly, his claim fails and it is dismissed.

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EMPLOYMENT JUDGE BEEVER

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

14 December 2018

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