



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112405/2019 (V)

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Held via CVP on 10, 11, 12 and 13 May 2021

Employment Judge: J McCluskey

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Ms A Brannigan

**Claimant
In person**

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Ministry of Defence

**Respondent
Represented by
Dr A Gibson
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

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(1) The claimant was not unfairly constructively dismissed and her complaint is therefore dismissed.

(2) The claimant's application for an anonymity order is refused.

REASONS

Introduction

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1. A claim was presented on 8 November 2019 in which the claimant made a complaint of unfair constructive dismissal.

2. The acts and omissions relied upon in asserting a repudiatory breach of the duty of trust and confidence were set out in paragraph 21 of her statement of

claim (page 16 of joint bundle) as follows (a) the swift change in role and duties in week 2 of my employment without proper consultation with me (b) the failure to provide me with work, dismissal of my concerns about the type of work and workload and bullying and harassment by line managers (c) the attitude of my line manager Flt L Lynch in suggesting I had mental health issues which I found offensive (d) the delay in referral to OH (e) the failure to allow me to be considered for a temporary shift in work or to be considered a priority mover (f) the interrogation when I sought advice from my TU rep and the demand that I provide details of the reasons for my meeting (g) the 10 May incident where I suffered humiliation and intimidation when Flt L Lynch removed all personnel except my supervisors from the room to tell me to go home (h) the 10 May email from Kev Middlemiss stating that I could not perform my role and that I would be removed from my current role and from the MOD (i) the threat of disciplinary proceedings, although I had not been subject to a performance improvement plan or warnings (j) the 13 May text exchanges with my supervisor and then my line manager by phone and email that I must return to work and would not be allowed to self-certify, even though in a distressed state.

3. The claimant continued to rely on each of these acts and omissions during the course of her evidence in asserting a repudiatory breach of the duty of trust and confidence.

4. The claimant gave evidence on her own behalf and also led evidence from (1) Nicholas Males and (2) Thomas Potter. The respondent led evidence from (1) Martin Lynch (2) Mark Quick and (3) James Walls. The evidence in chief of the claimant and of all witnesses called by the claimant and the respondent was contained in written witness statements, as directed in a previous case management preliminary hearing. The witness statements were taken as read in accordance with rule 43 of Schedule 1, The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("Tribunal Rules").

5. There was a joint bundle of documents extending to 633 pages.

6. By email dated 14 May 2021 the claimant made an application to the Tribunal for an anonymity order. Her request was for her name to be removed from any public records to protect her identity. The reasons given were for her own privacy and for the protection of her identity in her current employment. The respondent objected to the claimant's application.

Issues

The issues for the Tribunal to determine were:

7. Was there a repudiatory breach of the claimant's contract? If so, was the breach a factor in the claimant's resignation? If so, did the claimant affirm the breach? If not, did the respondent have a potentially fair reason for the conduct amounting to a repudiatory breach? If so, was the conduct reasonable in the circumstances such that the constructive dismissal was fair? If not, what compensation should be paid by way of a basic and compensatory award?
8. Whether an application by the claimant for an order that her identity should not be disclosed to the public, by the use of anonymisation or otherwise, in any public documents should be granted.

Findings in fact

Based on the information provided the Tribunal makes the following findings in fact which are relevant to the matters to be decided -

9. The claimant was employed by the Ministry of Defence ("MOD") from 1 December 2008 to 16 June 2019. She worked as a stationery clerk in the Logistics Support Squadron at RAF Lossiemouth from 4 February 2019 until her employment ended on or around 16 June 2019. She had around 4.5 years previous experience in a stationery role with the respondent, immediately prior to moving to RAF Lossiemouth. This experience was at RAF Kinloss.

10. After accepting the role at RAF Lossiemouth, but prior to starting, the claimant had a “gut instinct” that taking the role was wrong. She considered withdrawing her application. She discussed this with her manager at RAF Kinloss and with other colleagues. She was convinced by them that this was normal nerves about a new job. She was encouraged to take up the role at RAF Lossiemouth and decided to do so.
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11. In late January 2019, after she had accepted the stationery clerk role but prior to starting, she was advised that her application for the role of passes and permits clerk at RAF Lossiemouth had been selected for interview. The claimant was advised that if she was taking the stationery clerk role at RAF Lossiemouth she needed to withdraw her passes and permits clerk application. This was a difficult decision for the claimant. She was reluctant to withdraw the passes and permits clerk application. The claimant did not however want to jeopardise her stationery clerk role for which she had been appointed and which was due to start shortly. She decided to withdraw her application for the passes and permits clerk role.
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(a) swift change in role and duties in week 2 of my employment without proper consultation with me

12. The claimant commenced work in the Logistics Support Squadron at RAF Lossiemouth on 4 February 2019. Her supervisor was Jenni McMillan. Ms McMillan had day to day management responsibility for the claimant.
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13. On the claimant’s first day Ms McMillan showed her the filing system to be used for the procurement of stationery. She also showed the claimant around the stationery store. The stationery store was in an untidy state. Ms McMillan explained that they had not had a stationery clerk for over a year and that she had been sharing this responsibility with others, in addition to her own role. The claimant was told she would have responsibility for the stationery store. The claimant stated that she could organise the store but it would take her a substantial amount of time to do this.
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14. On 5 February 2019, the claimant's second day in the new role, she felt unsettled. She had not yet been transferred from Kinloss to Lossiemouth on the CP&F billing system. This was not something which either the claimant or Ms McMillan could do themselves. She asked Defence Business Services (who provide HR services for the MOD) ("HR") if she could return to her previous role at RAF Kinloss. She was told this was not possible.
15. During the first week of working in the department Ms McMillan formed the view that the claimant felt overwhelmed with the tasks being asked of her and that the claimant was not able to complete tasks given to her. Ms McMillan observed that the claimant appeared upset in the workplace on a number of occasions. She had concerns about her emotional state. She raised this with Mr Lynch.
16. The claimant became aware that the passes and permits clerk role at RAF Lossiemouth had been re-advertised. She submitted an application online for the role on 10 February 2019 which was the closing date. Due to her having previously made an application for this role, which she had then withdrawn, the online system would not accept her application. The claimant missed the closing date and was unable to progress her application.
17. On 13 February 2019 the respondent decided to allocate a different supervisor to the claimant. The claimant's new supervisor was Colonel Josie Donnelly. Ms McMillan told Mr Lynch that the claimant appeared overwhelmed by the tasks she was being asked to do and was not working. The claimant told Mr Lynch that she had no work to do. This was not the case as Ms McMillan had allocated work to the claimant. However Ms McMillan was very busy in her role working on the financial underspend. She did not have enough time to spend supervising and training the claimant until the financial underspend work was completed.

18. Mr Lynch decided that Ms Donnelly would have more time to provide supervision and training to the claimant. The decision to change the claimant's supervisor was done with the intention of supporting the claimant.

5 19. The claimant was asked to work on voucher process tasks under the supervision of Ms Donnelly. Voucher process was part of the claimant's role. The claimant's role was not changed. The claimant's duties were not changed. Her duties were reduced in order to provide her with supervision and support as Mr Lynch has been told by the supervisors that she appeared
10 overwhelmed by the tasks given to her. The intention was to build up her duties over time.

20. There was no swift change in role and duties in week two of the claimant's employment.

(b) failure to provide me with work, dismissal of my concerns about the type of work and workload and bullying and harassment by line managers

15 21. Under the supervision of Ms Donnelly the claimant was given information about voucher processes and spreadsheets. She was shown how prepare documents on spreadsheets. She was shown how to interrogate the system and she did this regularly. The claimant felt under pressure as the way in which she was being asked to work was new to her.

20 22. As her CP&F billing account had not yet been changed to RAF Lossiemouth she had to ask colleagues to log her in on their log in details. Sometimes colleagues could not log her in straightaway and she had to wait. The documents the claimant was dealing with had to go through a process, completed by others, before she sorted them and put the information in
25 spreadsheets. As her duties were part of a chain sometimes she had to wait until other colleagues had completed their part in the process. That did not result in her having no or insufficient work to do.

23. The working relationship between the claimant and Ms Donnelly was strained. The claimant was resistant to supervision and to support from Ms Donnelly. Ms Donnelly was frustrated as she observed occasions when the claimant was not working and observed mistakes in her work.
- 5 24. On or around 6 March 2019 Mr Lynch met with the claimant. Ms Donnelly and Ms McMillan were also present. Mr Lynch told the claimant that Ms Donnelly had observed her sitting at her desk not working. The claimant responded that she had insufficient work. Ms Donnelly did not agree with this. Ms Donnelly said that there was sufficient work within voucher processing for her to do. Ms
10 Donnelly said that the claimant was often seen not to be working. Ms Donnelly said that the claimant was making mistakes in the work she was doing.
25. In the week beginning 28 March 2019 the claimant was allocated the task of shredding financial documentation from previous years. This was a large shredding job and she was busy with the task all of that week.
- 15 26. On 8 May 2019 the claimant was told that going forward Ms McMillan would be her supervisor again. This was because Ms McMillan had finished working on the underspend project and now had more time to spend training her.
27. On 9 May 2019 Ms McMillan began working with the claimant again. The claimant did not like Ms McMillan's style of training her. The claimant
20 considered that she did not need training on the stationery ordering process and that she knew what she was doing. She was of the view that the process should be the same at Lossiemouth as it had been in her previous role at Kinloss. She felt she was being micromanaged by Ms McMillan. On one
25 occasion that day Chris Jarret, a manager in the department, intervened. He said that the claimant should let Ms McMillan train her in the Lossiemouth way of doing things and that Ms McMillan had a role to train her.
28. The claimant was provided with sufficient and appropriate work. Her supervisors sought to provide training and support to her but the claimant was

resistant to such attempts. Ms McMillan and Ms Donnelly emailed Mr Lynch about the claimant's workload and tasks and her attitude towards these (pages 40 and 45). They also spoke to Mr Lynch on a number of occasions about their concerns including in meetings with the claimant.

5 (c) attitude of my line manager Flt L Lynch in suggesting I had mental health issues which I found offensive

29. During around the week beginning 11 February 2019 Flight Lieutenant Martin Lynch invited the claimant into his office for a welcome chat. Mr Lynch was the second in command of the Logistics Support Squadron at RAF
10 Lossiemouth. Mr Lynch did not have direct day to day task management responsibility for the claimant's work but oversaw and had responsibility for the claimant. He was her line manager.

30. During this meeting the claimant told Mr Lynch that in the previous two years two very close family members had passed away. The anniversary of the
15 death of one of these family members coincided with her starting at Lossiemouth. The claimant became distressed and was in floods of tears. The claimant felt embarrassed at getting upset. The claimant felt that Mr Lynch was sympathetic towards her. He disclosed that he also had a close family member who had passed away.

20 31. During this meeting Mr Lynch had significant concerns about the claimant's emotional state. He tried to reassure her that help was available if she needed it. The meeting lasted around two hours and the claimant left the meeting still in a distressed state.

25 32. During this first meeting the claimant raised with Mr Lynch that she felt she had no work to do. She asked if she was required for the role. Mr Lynch said there was a definite need for the role. He explained that it may be slow to build up a workload as her supervisor Ms McMillan was busy with a financial underspend.

33. Between around 11 February and 27 March 2019 Mr Lynch had three informal meetings with the claimant. During the course of these informal meetings the claimant reported to Mr Lynch that she did not like the open plan environment, did not like working as part of a team, found many of the tasks too difficult and that she was not used to being supervised.
34. Mr Lynch was concerned about the claimant's ability to do the job from what her supervisors had told him. He was concerned that the claimant was sometimes observed doing no work. He was concerned that the claimant was difficult with her supervisors and resistant to receiving training. He was concerned that from his own observations and from what the supervisors told him that the emotional state of the claimant had not improved and that the atmosphere in the office was being impacted by this.
35. The second informal meeting between the claimant and Mr Lynch was very similar to the first meeting. It lasted around two hours. The claimant was in floods of tears and distressed and talked about how unhappy she was in the workplace. Mr Lynch remained concerned about the emotional state of the claimant as observed by him and as reported to him by the supervisors. The claimant told Mr Lynch at the meeting that the only reason she was coming into work was because of the help Mr Lynch was providing to her.
36. At the third informal meeting between the claimant and Mr Lynch he remained concerned about her emotional state. Mr Lynch suggested to the claimant that she attend her GP and he queried whether or not it would assist her to look at the issue of her mental health. Mr Lynch did not accuse the claimant of being mentally ill. The claimant reacted badly and was hostile to the suggestion that she attend at her GP. The claimant told Mr Lynch that she felt offended. Mr Lynch reassured her that no offence was meant.

(d) delay in referral to OH

37. On 22 March 2019 the claimant was asked to go to Mr Lynch's office. Her supervisors Ms Donnelly and Ms McMillan were also present. Mr Lynch told

the claimant that the meeting was to discuss making a referral for her to occupational health. The claimant asked that the meeting be rescheduled so a trade union representative could be present.

38. On 28 March 2019 a meeting took place between the claimant and Mr Lynch. Tom Potter, a trade union representative was also present. Susan Brewer (secretary) took notes of the meeting (page 41-42). During the meeting Mr Lynch said that he was letting the claimant know that he was going to refer her to occupational health.
39. On 4 April 2019 the claimant emailed Mr Lynch (page 57). She asked when notes from the meeting would be distributed. She asked if there would be a follow up meeting. She asked when she would receive a letter inviting her to occupational health.
40. On 5 April 2019 the claimant was given a copy of the notes taken by Ms Brewer (page 58). The claimant asked for amendments to the notes. A second version was provided by Mr Lynch on 10 April 2019. The claimant considered there were still some discrepancies in the notes and did not sign them. She returned the hard copy to Mr Lynch with handwritten amendments to the notes.
41. Mr Lynch was on annual leave from around 13 April until 22 April 2019 and was then on a course from 26 April to 7 May 2019. The claimant was on annual leave from around 23 April 2019. She returned to work on 7 May 2019.
42. Mr Lynch thought that he needed the consent of the claimant in order to make the referral to occupational health. Mr Lynch wanted to obtain a signed copy of the notes of the meeting on 28 March 2019 from the claimant to signify her consent. Before leaving for annual leave around 13 April 2019 he had not received a signed copy of the notes. The claimant and Mr Lynch were not in the department at the same time from around 13 April until 7 May 2019.

43. On 10 May 2019 Mr Lynch had concerns about the claimant's emotional state. He sought advice from HR who advised that policy allowed him to make an occupational health referral without the consent of the claimant if there was a concern that an employee's health was affecting work performance or attendance.

44. Mr Lynch made the referral to occupational health on or around 12 May 2019. There was a process error with the referral and it was resubmitted by Mr Lynch on 13 May 2019.

(e) failure to allow me to be considered for a temporary shift in work or to be considered a priority mover

45. A few days after joining the department the claimant told Mr Lynch that she was applying again for the passes and permits clerk role in Lossiemouth. Mr Lynch offered to assist the claimant in her application for this role if she wished to change jobs. The claimant did not ask Mr Lynch for any assistance. The claimant made no request of Mr Lynch to be is considered for a temporary shift in work or to be considered a priority mover. Any such request would in any event have needed to be made by the claimant through HR.

46. On 9 May 2019 around lunchtime the claimant spoke to HR to ask about the possibility of gaining priority mover status or a temporary relocation to another unit. HR advised that this was not possible at the time. The claimant also discussed leaving the department on a permanent basis.

47. On 9 May 2019 around 3.15pm the claimant attended a meeting with Mr Potter, her trade union representative. Immediately before the meeting the claimant told Ms McMillan she needed to go to another department and asked her permission to do so. The claimant did not tell Ms McMillan that she was going to speak to a trade union representative.

48. At the meeting with Mr Potter the claimant told him that she had spoken to HR. She told Mr Potter that she felt there was no other option but to leave the

MOD though she was extremely reluctant about this option. Mr Potter advised the claimant that to leave the MOD meant she would not have a job or an income. The claimant was of the view that his advice was good and made sense. The claimant left the meeting at around 4.40pm and went home.

5 (f) interrogation when I sought advice from my TU rep and the demand that I provide details of the reasons for my meeting

49. On Friday 10 May 2019 at around 9.30am Mr Jarret (manager in the department) asked the claimant where she had been the previous afternoon. The claimant said that she was with her trade union representative. Mr Jarret told the claimant that personnel in the department had been concerned for her, had looked through the building for her and had noticed that her car was gone. Mr Jarret told the claimant that if she wanted to speak to the trade union during working time this would need to be a scheduled meeting and authorised by a supervisor. The claimant told Mr Jarret about the reasons for her unhappiness at work and that she had been discussing this with the trade union representative.

50. The claimant became distressed and was crying when speaking to Mr Jarrett.

20 (g) the 10 May incident where I suffered humiliation and intimidation when Flt L Lynch removed all personnel except my supervisors from the room to tell me to go home

51. Shortly after the conversation with Mr Jarrett the claimant was asked to attend Mr Lynch's office. She was told that Mr Jarret and Ms McMillan would also be present. The claimant asked if her trade union representative could be present. Mr Lynch said no because it was an informal meeting. The claimant began to cry again. Mr Jarret told the claimant that he was concerned about her welfare.

52. The claimant refused to go into Mr Lynch's office. Mr Lynch asked everyone to leave the open plan office area where the claimant and Mr Jarret were

5 talking. He asked the claimant, Mr Jarret and Ms McMillan to remain. The claimant was crying and distressed. Mr Lynch said that under the advice of HR she was to be sent home for welfare reasons. Mr Lynch asked if she had any concerns about being at home on her own. He asked the question out of concern for her welfare. The claimant said she had no such concerns. He said he would speak to the claimant on her return to work on Monday 13 May 2019.

10 53. When the claimant arrived home she phoned HR. They advised that due to her upset she needed an urgent employee wellbeing phone appointment. She was given an appointment for that day. She told the employee wellbeing adviser that she felt she had to leave the MOD for her welfare. The adviser said to think carefully about everything over the weekend and not to make any hasty decisions.

(h) 10 May email from Kev Middlemiss stating that I could not perform my role and that I would be removed from my current role and from the MOD

15 54. In the afternoon of 10 May 2019 Kev Middlemiss (Squadron WO, Logistics Support Squadron) emailed Mr Lynch (page 72). He questioned the claimant's suitability for the role of stationery clerk.

55. The claimant did not have sight of this email and was not aware of its contents until much later than the date of her resignation on 22 May 2019.

20 (i) threat of disciplinary proceedings, although I had not been subject to a performance improvement plan or warnings

25 56. On 10 May 2019 after the claimant had been sent home Mr Lynch sought advice from HR. HR replied the same day (page 77). HR referred to what they called an "outburst/inappropriate behaviour" and that the claimant had refused to enter Mr Lynch's office. HR advised Mr Lynch to begin a misconduct process with the claimant. Mr Lynch went into the office on 12 May 2019, which was a Sunday, to raise the necessary paperwork to begin the misconduct process and the occupational health referral.

57. Mark Quick (Officer Commanding Engineering and Logistics Wing) prepared a letter to the claimant stating that a misconduct investigation was to be commenced. Mr Quick held a more senior position to that of Mr Lynch. The letter was dated 13 May 2019 (page 82). The letter stated that Mr Lynch was to investigate alleged instances of repeated minor misconduct in the form of unacceptable behaviour in the workplace. The letter stated that the decision about any disciplinary warning would be made by Mr Quick. The letter stated that this was an investigation and that no conclusion about the alleged misconduct had been reached.

58. On 13 May 2019 Mr Lynch told the claimant that it had been intended to give her a letter that day outlining disciplinary proceedings which were to begin against her.

59. The letter was not given to the claimant by Mr Quick as she did not attend work on 13 May 2019 or subsequently.

60. The misconduct investigation set out in the letter of 13 May 2019 did not proceed as the claimant did not return to work.

(j) 13 May text exchanges with my supervisor and then my line manager by phone and email that I must return to work and would not be allowed to self-certify, even though in a distressed state

61. This is the last straw identified by the claimant. On Monday 13 May 2019, at the beginning of the day, the claimant approached the building where she worked. She felt overwhelmed with fear and starting crying. She could not face going into the building. She texted her supervisor to say that she would not be in and said that she would also send an email.

62. The claimant went to the guardroom on site and used a computer there. She emailed Mr Lynch. She said she had found the incident on 10 May 2019 when she was sent home to be very intimidating and upsetting. She said she would be self-certifying for a few days.

63. Around the same time the claimant's supervisor had responded to her text. The claimant emailed Mr Lynch at 8.43am from the guardroom. She said that her supervisor had texted her but she felt upset and apprehensive and would not be in attendance for work that day (page 79).
- 5 64. Mr Lynch replied to her email at 8.48am (page 78). He said that she was on site at Lossiemouth but refusing to come to the department. His understanding was that this was not a self-certified absence. Mr Lynch had been advised by HR that this was not a self-certified absence situation as she was still on site. The claimant left the site at Lossiemouth shortly thereafter and went home.
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65. At around 9.20am the claimant made contact with Mr Lynch from her home. She said she would not be coming in to work. Later that day the claimant obtained a fit note from her GP which signed her off with work related stress for a period of two weeks until 26 May 2019. The claimant did not return to work.
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Resignation

66. The claimant submitted her resignation by email to Mr Lynch on 22 May 2019. She resigned giving a period of notice. Her employment ended on or around 16 June 2019.
- 20 67. The claimant had typed up and printed her resignation letter on 17 May 2019. She had not submitted it on that day but waited until 22 May 2019 because she had contacted other departments and personnel within the respondent in an attempt to move to another department. No other roles had been forthcoming. She then submitted her resignation.
- 25 68. The claimant sought to withdraw her resignation on the 27 May 2019. Mr Quick asked Matt Buttlings, who had senior line management responsibility for the claimant, to undertake a review and make a decision on whether or not to accept the withdrawal of the resignation.

69. Mr Buttling spoke with Mr Lynch and with HR. Mr Buttling was aware that a misconduct investigation was outstanding, there were concerns about the claimant's performance and that there were difficulties in her relationships with her supervisors and line manager. Mr Buttling decided not to accept the claimant's request to withdraw her resignation.

Observations on the evidence

70. It is not the function of the Tribunal to record all of the evidence presented to it and the Tribunal has not attempted to do so. The Tribunal has focused on those parts of the evidence which it considered most relevant to the issues it had to decide.

71. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event in fact occurred.

72. The Tribunal found the respondent's witnesses to be credible and reliable. There were a number of conflicts in the evidence. The Tribunal has resolved these mostly in favour of the respondent. The Tribunal did not regard the fact that it preferred the evidence of the respondent as tainting the claimant's overall credibility. These were differences in recollection and differences in perception.

Relevant Law

73. The right not to be unfairly dismissed is found in section 94 of the Employment Rights Act 1996 ("ERA") –

"(1) An employee has the right not to be unfairly dismissed by his employer."

74. Section 95 ERA (circumstances in which an employee is dismissed) provides, so far as relevant to this case, as follows –

"(1)....an employee is dismissed by his employer 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."

This is commonly referred to as "constructive dismissal".

- 5 75. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (**Western Excavating (ECC) Ltd v Sharp [1978] ICR 221**).

10 Was there a repudiatory breach of contract?

76. There must be a breach of contract by the employer. This may be a breach of an express or implied term. *"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*
15 *essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."* (Western Excavating).

77. The breach may consist of a one-off act amounting to a repudiatory breach.
20 Alternatively, there may be a continuing course of conduct extending over a period and culminating in a "*last straw*" which considered together amount to a repudiatory breach. The "*last straw*" need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of
25 itself to be unreasonable or blameworthy (**London Borough of Waltham Forest v Omilaju [2005] IRLR 35**).

78. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: *"The test does not require*
30 *a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer*

acts in such a way, is satisfied objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..." (**Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT**).

- 5 79. **In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978** the Court of Appeal listed five questions that it should be sufficient to ask in order to determine whether an employee was constructively dismissed (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 10 itself a repudiatory breach of contract? (iv) If not, was it nevertheless a part (applying the approach explained in *Waltham Forest v Omilaju* [2004] EWCA Civ 1493) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied 15 term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign.) (v) Did the employee resign in response (or partly in response) to that breach?

Submissions

- 20 80. Dr Gibson for the respondent made his submissions first followed by the claimant. The Tribunal has not recorded these in full but has summarised the relevant aspects of them.

Respondent submissions

- 25 81. Dr Gibson drew the Tribunal's attention to the cases of *Western Excavating (ECC) Ltd v Sharp* [1978] and *Kaur v Leeds Teaching Hospitals NHS Trust* [2018]. He submitted that the claimant relied upon a course of conduct comprising several alleged acts and omissions (set out at paragraph 21(a)-(j) of her claim), known as the last straw doctrine. He submitted that the test was whether, viewed objectively, the course of conduct showed that the employer,

over time, had demonstrated an intention to no longer be bound by the contract of employment.

5 82. He also drew the Tribunal's attention to the decision in **Moghal v (1) M Hudda (2) N Hudda t/a Playhouse Montessori UKEAT/0210/08** and submitted this case sets out the approach which Tribunals need to take when providing reasons in constructive dismissal cases when the employee relies on a number of acts taking place over a period of time. He invited the Tribunal, following the guidance in **Moghal**, to make specific findings of fact about whether each of the alleged acts had taken place. He invited the Tribunal to make findings in fact that none of the alleged acts as set out at paragraph 10 21(a)-(j) of the claim occurred, or if they did occur, they did not occur in the way alleged.

15 83. Dr Gibson submitted that it was an unusual aspect of the claim that following intimation of her resignation with notice, the claimant then sought to withdraw her resignation, a request which was is satisfied but not accepted by the respondent.

20 84. He submitted that once a valid notice has been given, it cannot be withdrawn unilaterally, whether by the employer or the employee (**Riordan v War Office [1961] 1 WLR 210 and Harris and Russell Ltd v Slingsby [1973] ICR 454**).

85. He submitted that seeking to withdraw her notice called into question the claimant's position that she believed that the respondent had breached the implied term of mutual trust and confidence. He submitted this was the principal weakness in the claimant's claim.

25 Claimant's submissions

86. The claimant narrated a summary of the sequence of events, as she saw them, from 4 February 2019. She relied on the events set out in paragraph 21(a)-(j) of her claim.

87. She submitted that her situation at work grew progressively worse following her arrival in the department. She was sent home on Friday 10 May 2019. She tried to return to work on Monday 13 May 2019 but felt anxious when approaching the department. She went to the guardroom which was situated on the base at Lossiemouth and emailed her line manager. Mr Lynch said she could not self-certify an absence from work and asked her to come to the department. He told her that the intention was to give her a letter that day to commence disciplinary proceedings. Thereafter she was on GP authorised work related stress absence. She drafted her resignation letter on 17 May 2019 but did not submit it. She made attempts to seek alternative working arrangements with the respondent but was unable to do so. She resigned on 22 May 2019. She tried to withdraw her resignation on 27 May 2019. She made several attempts thereafter to withdraw her resignation but these were rejected by the respondent.
88. She submitted that the respondent was in breach of a number of their own policies and in breach of legislation, including the Equality Act 2010.

Discussion and decision

89. The Tribunal reminded itself of the terms of section 95(1)(c) ERA and the legal test for constructive dismissal as set out by Lord Denning in *Western Excavating*. There had to be a breach of contract which went to the root of the contract. It had to be sufficiently serious to entitle the claimant to resign immediately, regardless of whether she actually did so.
90. The claimant asserted that there was a breach of the implied duty of trust and confidence because of: (a) the swift change in role and duties in week 2 of my employment without proper consultation with me (b) the failure to provide me with work, dismissal of my concerns about the type of work and workload and bullying and harassment by line managers (c) the attitude of my line manager Flt L Lynch in suggesting I had mental health issues which I found offensive (d) the delay in referral to OH (e) the failure to allow me to be considered for a temporary shift in work or to be considered a priority mover (f) the interrogation when I sought advice from my TU rep and the demand that I

5 provide details of the reasons for my meeting (g) the 10 May incident where I
suffered humiliation and intimidation when Flt L Lynch removed all personnel
except my supervisors from the room to tell me to go home (h) the 10 May
email from Kev Middlemiss stating that I could not perform my role and that I
would be removed from my current role and from the MOD (i) the threat of
disciplinary proceedings, although I had not been subject to a performance
improvement plan or warnings (j) the 13 May text exchanges with my
supervisor and then my line manager by phone and email that I must return
10 to work and would not be allowed to self-certify, even though in a distressed
state.

(a) swift change in role and duties in week 2 of my employment without proper
consultation with me

15 91. The claimant asserts that her role was changed in her second week of
employment. The respondent assert that her duties were reduced in order to
provide her with supervision and support and that there was an intention to
build up the claimant's work over time. The Tribunal preferred the evidence of
the respondent witnesses who gave evidence about reducing her tasks to
provide her with support and with the intention that her tasks be build up over
time. This was borne out in practice. Thereafter on or around 8 May 2019 the
20 claimant moved back to being supervised by Ms McMillan in order to be
trained on additional duties.

25 92. It appears to the Tribunal that the relationship between the claimant and the
respondent was strained from the outset because the claimant did not want
to be there. Ms McMillan took time over the first couple of days to show the
claimant what was expected of her. The claimant however appeared resistant
to being shown and was resistant to following the processes in place at
Lossiemouth. The claimant said that she had made a mistake in taking the
job. Ms McMillan was also busy with a project which was going to take a few
months to complete and did not have a lot of time to provide training and
30 supervision to the claimant. In consultation with Mr Lynch and Ms Donnelly a
decision was made to ask the claimant to focus on reduced duties to try to

provide support to the claimant. It appeared to the Tribunal that even before she started the claimant had significant reservations about the role and that she made that known. She had a gut feeling before she started that the role was not the right one for her, although she did not elaborate on why this was the case. She was interested in the passes and permits clerk role at Lossiemouth but had to withdraw from that process. It appeared to the Tribunal that from the outset the claimant did not want to be in the stationery clerk role. The respondent on the other hand was trying to find ways to support the claimant by getting her to focus on particular duties and allocating a supervisor who had more time to help her.

93. The Tribunal is satisfied that it was entirely reasonable of the respondent to allocate a different supervisor to the claimant and to reduce the number of duties she was being asked to do, in the circumstances, with the intention of providing support to her.

15 (b) failure to provide me with work, dismissal of my concerns about the type of work and workload and bullying and harassment by line managers

94. The claimant and respondent disagreed on whether work had been provided to the claimant. Ms McMillan was busy with a financial underspend exercise when the claimant joined her team. After a few days Ms McMillan became concerned about the claimant's ability to carry out the duties which she had been asked to do and she became concerned about the claimant's emotional state. This resulted in the claimant being given limited duties to carry out in the first two weeks in the role. The Tribunal preferred the evidence of the respondent witnesses that her supervisors were doing all they could to train and support her and give her appropriate work but that she was resistant to support and was not carrying out tasks expected of her. This was the experience of both of the supervisors and Mr Lynch who were all experiencing and witnesses the same concerns. Sometimes there were delays before the claimant could start on a task. This was because the claimant had to ask colleagues to log her on to the CP&F billing system before her account details were transferred from Kinloss to Lossiemouth. The Tribunal accepts that this

was frustrating for the claimant but it did not result in her having no work or insufficient work to do. The Tribunal also accepts that the claimant may not have been as busy as she had been in her previous role at Kinloss. But that does not mean that she had no work to do or that her workload was insufficient in the circumstances. The claimant in her evidence referred to voucher processing duties which she was carrying out regularly and makes reference to other tasks including shredding which indicates that she did have work to do. There was also email correspondence from Ms Donnelly to Mr Lynch setting out tasks which the claimant had been asked to complete. The claimant's view of this was that the email captured work allocation over a couple of days only. The claimant's perception throughout her time in the department was that she had no or insufficient work to do. This was not the evidence of Mr Lynch. In the Tribunal's view the claimant's workload and duties were front of mind for the supervisors and Mr Lynch. It could not have been otherwise as the claimant had raised what she perceived to be low workload and dissatisfaction with her duties with Mr Lynch on many occasions. It was being reported to Mr Lynch by Ms McMillan and Ms Donnelly that the claimant was being given appropriate work to do. There were other senior members of staff in the department such as Mr Jarret who also witnessed the claimant being allocated tasks and training. The Tribunal preferred the respondent's evidence which was supported by a number of supervisors and line managers in the department.

95. The Tribunal is satisfied that the approach to training and supervision taken by Ms Donnelly and Ms McMillan was entirely reasonable. On the one hand the claimant was resistant to being trained and supervised. But Ms Donnelly was finding mistakes in the claimant's work and took the view that she needed to continue to be trained and supervised and closely managed. This led to the working relationship between the claimant and Ms Donnelly deteriorating. When the claimant returned to being supervised by Ms McMillan on or around 8 May 2019 the resistant approach of the claimant continued. This was observed by Mr Jarrett who intervened and said that the claimant should let

Ms McMillan train her in the Lossiemouth way of doing things and that Ms McMillan had a role to train her.

96. The Tribunal is satisfied that there was no failure to provide the claimant with work or any dismissal of her concerns about the type of work and workload.

5 97. The Tribunal is satisfied that the approach to training, supervision and management was entirely reasonable and supportive and did not amount to bullying and harassment by the claimant's supervisors or other line managers.

(c) attitude of my line manager Flt L Lynch in suggesting I had mental health issues which I found offensive

10 98. Mr Lynch's evidence was that he had been trying to be supportive to the claimant during the course of his dealings with her including the three informal meetings with her when she joined the department. It was in the third of these meetings that he had suggested that she attend her GP. He had tried to signpost her to other coping strategies such as hobbies and work life balance
15 as she was visibly showing signs to him that she was not coping, such as crying. The claimant had told Mr Lynch during the first two informal meetings that she found his approach to be supportive.

99. The Tribunal was satisfied by Mr Lynch's explanation that the purpose of him suggesting that she attend her GP was as a way to signpost the claimant to
20 places where she could get help with her mental health if she thought she needed it. The Tribunal was satisfied that Mr Lynch had genuine concerns about the emotional state of the claimant. Indeed, he continued to have those concerns and later referred the claimant for an occupational health assessment, to which she agreed. During her subsequent grievance process
25 following her resignation the claimant pointed to the terms of the occupational health report which said that no health issues were identified. The claimant asserted that this meant that it was wrong for Mr Lynch to have signposted mental health support through her GP. The Tribunal does not agree with the claimant's assertion. The Tribunal is of the view that Mr Lynch's concerns

were genuine and that the reference to mental health support services through her GP was a proper and entirely reasonable course of action.

- 5 100. The Tribunal was satisfied that Mr Lynch did not accuse the claimant of having mental health issues. The Tribunal preferred the evidence of Mr Lynch that the reference was to her GP where she could get help with her mental health if she thought she needed it and that there was no accusation. This view was reached on balance given the support and signposting which he had previously offered to the claimant and the claimant having acknowledged in previous meetings that she found his approach to be supportive.
- 10 101. The Tribunal was satisfied that Mr Lynch raised the query in an appropriate way. The Tribunal was satisfied that Mr Lynch was entitled to raise the query given his own observations and those of the supervisors over a period of time. The Tribunal was satisfied that Mr Lynch approached the conversation about her attending her GP and whether it would assist her to look at her mental health in a sensitive manner.
- 15 102. The Tribunal was satisfied by Mr Lynch's explanation that he would have done the same with any other team member whom he witnessed crying and distressed in the way that he and the supervisors had observed the claimant.
- 20 103. The Tribunal is satisfied that it was entirely reasonable for Mr Lynch to have referred to the claimant's mental health in the way in which he did.

(d) delay in referral to OH

- 25 104. In evidence in chief the claimant said that Mr Lynch had insisted that the occupational health referral was being made that afternoon. This was inconsistent with the evidence of Mr Lynch who said that his understanding was that he had to get the consent of the claimant to an occupational health referral and that he was waiting for signed notes of the meeting on 28 March 2019 to signify that consent. Mr Lynch later found out from HR that he could make an occupational health referral without the claimant's consent. The Tribunal found the claimant's position in relation to the occupational health

referral somewhat contradictory. On the one hand she was aggrieved that Mr Lynch had raised the question of her mental health in an informal meeting. On the other hand the claimant was aggrieved that an occupational health referral because of his concerns about her emotional state was not progressed more quickly. The Tribunal accepts that claimant understood that Mr Lynch intended to action the occupational health referral after the meeting on 28 March 2019. That may well have been the intention of Mr Lynch in the meeting with the claimant. In the Tribunal's view the fact that he did not make the occupational health referral straight away can be explained by the fact that he then thought he needed the claimant's consent (which understanding turned out to be wrong), there was a period when he was waiting for the notes of the meeting on 28 March 2019 to be agreed and there were periods when both he and the claimant were on annual leave or not in the department. The Tribunal is satisfied that, in the circumstances, there was no unreasonable delay in the referral to occupational health.

(e) failure to allow me to be considered for a temporary shift in work or to be considered a priority mover

105. Mr Lynch had offered to assist the claimant in re-applying for the passes and permits clerk role but he was not in a position to make decisions on such a move. He was not able to make decisions on a temporary shift in work or priority mover status for the claimant. There was no evidence that Mr Lynch or any others in the department had stopped or blocked the claimant from being considered for a temporary shift in work or from being considered a priority mover. The Tribunal is satisfied that there was no failure to allow the claimant to be considered for a temporary shift in work or to be a priority mover.

(f) interrogation when I sought advice from my TU rep and the demand that I provide details of the reasons for my meeting

106. The claimant had gone to speak to her trade union representative on the afternoon of 9 May 2019 around 3.15pm. She had told her supervisor that she

was going to another department but had not told her that she was going to speak to the trade union. Her supervisor and other colleagues became concerned when she didn't return to the department and they observed that her car had gone. The Tribunal can understand the concern of her colleagues against the background of the claimant's emotional state. From the perspective of the supervisors and line management this was also an example of her not working. When Mr Jarret spoke to the claimant on 10 May 2019 he referred to a concern for her welfare by both him and by other colleagues. It appears to the Tribunal that it was entirely reasonable for Mr Jarret to have asked the claimant about her whereabouts in this manner and to say that if she wanted to meet with her trade union representative this needed to be by prior arrangement with a supervisor or line manager. The Tribunal did not agree with the claimant that the conversation with Mr Jarret was an interrogation. On balance it preferred the evidence of the respondent that it was an enquiry based on concerns about her welfare the previous day when she could not be found. This was consistent with previous concerns about her emotional state.

(g) the 10 May incident where I suffered humiliation and intimidation when Flt L Lynch removed all personnel except my supervisors from the room to tell me to go home

107. The Tribunal had some sympathy with the situation which Mr Lynch faced when the claimant refused to go into his office. He was her line manager and the Tribunal is satisfied that this was a reasonable management request. The Tribunal understood the dilemma which he then faced as he did not want to have a conversation with the claimant to ask her to go home in front of all of the staff in the open plan office. The Tribunal is satisfied that Mr Lynch had no alternative but to ask other personnel in the open plan office, apart from the claimant's supervisors, to leave the open plan area. The Tribunal is satisfied that, in circumstances where the claimant refused to go into his office, this was an entirely reasonable action to take.

(h) 10 May email from Kev Middlemiss stating that I could not perform my role and that I would be removed from my current role and from the MOD

108. The claimant did not have sight of the email from Kev Middlemiss prior to her resignation. Nor did she have knowledge of the concerns which Mr Middlemiss had about the claimant continuing in her role and his views about managing the situation through a disciplinary process prior to her resignation. The claimant obtained a copy of the email a long time after her resignation and the Tribunal does not agree with the claimant that this email can be relied upon by her as part of a course of conduct by the respondent calculated or likely to destroy or damage the relationship of trust and confidence.

(i) threat of disciplinary proceedings, although I had not been subject to a performance improvement plan or warnings

109. The Tribunal notes that Mr Lynch refers in his evidence to going into the office on 12 May 2019 to raise the necessary paperwork to begin disciplinary proceedings against the claimant. The Tribunal is of the view that on balance it is likely that he also referred to beginning disciplinary proceedings against the claimant when he spoke to her on 13 May 2019. In fact, what was intended, as evidenced by the letter which was to be given to the claimant by Mr Quick, was that there was to be an investigation into alleged misconduct to decide whether disciplinary action was appropriate or not.

110. The claimant says that she had not been subject to a performance improvement plan. This is correct. The nature of the investigation was however intended to be in relation to repeated minor misconduct rather than a performance matter. The claimant is also correct when she says that she was not subject to any warnings, for performance or misconduct.

111. Although Mr Lynch may not have been clear to the claimant that matters were at the misconduct investigation stage only, the Tribunal is satisfied that Mr Lynch did not threaten the claimant with disciplinary proceedings when they spoke on 13 May 2019. The Tribunal is satisfied that the letter to be given to

the claimant, had she attended work that day, set out an intention to begin a misconduct investigation and that no conclusion had been reached about the alleged misconduct. The Tribunal is satisfied that the process set out in the letter would have been followed had the claimant received the letter given that the advice of HR was being obtained about the correct process to follow. Mr Lynch would not have been in a position to make any threats to the claimant as he was taking advice from HR on the correct process and would have had to follow that advice.

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112. The Tribunal is satisfied that the process to be followed by the respondent was appropriate. The reference by Mr Lynch to disciplinary proceedings beginning against the claimant did not indicate that any disciplinary sanction had already been imposed nor was it a threat of disciplinary proceedings or disciplinary sanction.

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(j) 13 May text exchanges with my supervisor and then my line manager by phone and email that I must return to work and would not be allowed to self-certify, even though in a distressed state

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113. This is the last straw relied upon by the claimant in paragraph 21 of her statement of claim. The Tribunal considered that Mr Lynch found himself in a difficult position on the morning of 13 May 2019. He was being contacted by the claimant to say that she was intending to self-certify as absent from work. The claimant was texting her supervisor to say that she was not coming to work. However, Mr Lynch was aware that the claimant was on site at Lossiemouth and was contacting him from a computer in the guardroom. Mr Lynch took advice from HR on what he should do. HR advised that as the claimant was at work, albeit not in the department, it was not appropriate for her to self-certify an absence. Mr Lynch told the claimant this and told her that she was to come to the department as she was on site. The Tribunal is of the view that the advice from HR to Mr Lynch was technically correct as the claimant was in the workplace albeit in the guardroom and not in the department. The matter could have been explained more clearly to the claimant in the sense that she could have been told that if she was not coming

to the department she needed to go home and to self-certify when she got home. It was however a difficult situation for Mr Lynch. The claimant was in a distressed state. Mr Lynch was being advised by HR that technically if she was on site she could not self-certify and that she should go to the department.
5 The Tribunal understands why this approach was taken by HR and by Mr Lynch. Once the claimant had gone home she would have been able to self-certify her absence though in fact she obtained a GP fitness for work certificate. The Tribunal is therefore satisfied that the approach adopted by Mr Lynch, in the circumstances, was a reasonable one.

10 Resignation

114. The claimant submitted her resignation by email to Mr Lynch on 22 May 2019. Thereafter the claimant attempted to withdraw her resignation on 27 May 2019 but this was not accepted by the respondent. The Tribunal is satisfied that the respondent was under no obligation to accept the withdrawal of her
15 resignation. There had been a significant passage of time between her leaving the site on 13 May 2019 and submitting her resignation on 22 May 2019 and the respondent did have concerns if she was to return to the workplace.

115. The Tribunal is satisfied that the claimant was struggling in her role and her line managers and supervisors did everything they could to support her.
20 Unfortunately, the claimant was either unwilling or felt unable to accept the support offered to her. The approach of the respondent in relation to each of the allegations relied upon by the claimant at paragraph 21(a)-(j) of her statement of claim was reasonable. The incident on 13 May 2019 when the claimant arrived on site at Lossiemouth and was told she could not self-certify
25 whilst on site and, as she was at work, she should come to the department was not of itself a repudiatory act. Nor was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence.

116. Objectively, the Tribunal is satisfied from the perspective of a reasonable
30 person in the position of the claimant that these events when considered

together did not constitute a course of conduct calculated or likely to destroy or damage the relationship of trust and confidence without reasonable and proper cause. There was no repudiatory breach and accordingly the claimant did not terminate her contract in circumstances in which she was entitled to terminate it without notice by reason of the respondent's conduct. The claimant was not therefore constructively dismissed and instead resigned voluntarily.

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117. In the circumstances it is not necessary for the Tribunal to consider whether the alleged breach was a factor (i.e. played a part) in the claimant's resignation or whether the claimant affirmed the alleged breach.

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118. A further aspect of this claim is that having submitted her resignation with notice on 22 May 2019 the claimant then sought to withdraw her resignation on 27 May 2019. A repudiatory breach is a breach by the employer that is of sufficient gravity that it entitles the employee to treat him or herself as dismissed. The Tribunal was of the view that there had been no repudiatory breach by the respondent. It was not therefore necessary for the Tribunal to consider the effect on her claim of the claimant having sought to withdraw her notice five days later. It does however appear to the Tribunal that the effect of the claimant seeking to withdraw her notice is that the claimant was now saying that there had been no repudiatory breach of her contract of employment and no dismissal by the respondent in accordance with section 95(1)(c) ERA.

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119. The claimant in her submissions asserted breaches of the Equality Act 2010. The claimant has not brought any claims under the Equality Act 2010 and the Tribunal cannot therefore consider any such claims.

Anonymity application

120. Following the conclusion of the hearing the claimant made an application by email for an order that her identity should not be disclosed in any public documents. The reasons given were for her own privacy and for the protection

of her identity in her current employment. The respondent objected to the application.

- 5 121. The Tribunal considered whether such an order was necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A Employment Tribunals Act 1996. (rule 50(1) Tribunal Rules). In considering whether to make an order under this rule, the Tribunal is required to give full weight to the principle of open justice and to the Convention right to freedom of expression (rule 50(2) Tribunal Rules).
- 10 122. The respondent said they had no concerns about a risk to national security if the claimant's identity and current employment was made public. If they had, they said, they would have sought an order in terms of rule 94 of the Tribunal Rules (national security proceedings).
- 15 123. The respondent submitted that the claimant had no automatic right to request anonymity to protect her privacy. There was no suggestion that disclosure of her identity would pose a risk to her health or wellbeing. The identity of employees of the respondent, against whom she had made serious allegations, would be made public. In fairness to them the identity of the claimant should also be made public. That was in line with the principle of open justice.
- 20 124. In arriving at its decision, the Tribunal had regard to **EF v. AB [2015] IRLR 619, F v. G [2012] ICR 246** in which Mr Justice Underhill set out a suggested procedure in cases where an anonymity order is sought and **BBC v. Roden 2015 ICR 985, EAT**.
- 25 125. The importance of open justice was emphasised in *British Broadcasting Corporation v Roden*. Mrs Justice Simler observed that that the principle of open justice was of paramount importance and that derogations from it could only be justified when strictly necessary in the interests of justice.

126. The Tribunal carried out the so-called “balancing exercise”, bearing in mind the principle of open justice. The Tribunal decided that no anonymisation was required to protect Article 8 rights to a private and family life under the European Convention on Human Rights. In arriving at that view, the Tribunal
5 balanced the various competing interests that arise, in particular Article 6: civil rights to be determined at a fair and public hearing and the Article 10 right of freedom of expression, as the Tribunal was required to do.
127. The Tribunal’s assessment is that the weight of the claimant’s Article 8 right was low. There was no suggestion that disclosure of her identity would pose
10 a risk to her health or wellbeing. Her request for anonymity was focussed on her having only recently gained full time employment and she did not want further opportunities potentially jeopardised by prospective employers or colleagues finding out information about her claim.
128. Balanced against her Article 8 rights are Article 6 and Article 10 rights. The
15 claimant chose to bring proceedings against the respondent in a public tribunal. The detailed allegations she made of a repudiatory breach of her contract would therefore come to light during the course of her evidence and she must be taken to have appreciated the attendant risk of publicity in bringing public proceedings. This is a significant factor that the claimant ought
20 to have considered when deciding to submit her claim. The effect of an anonymity order, should it be made, would be to shield the claimant from public scrutiny of whether the respondent had committed a repudiatory breach of her contract of employment. The Tribunal's function was to adjudicate on whether the claimant had been constructively dismissed. Having done so it
25 obstructs the Tribunal process if the claimant is then shielded by anonymity in the judgment that adjudicated on her claim.
129. The decision of the Tribunal was that no anonymity order should be granted.

130. Further, there was no risk to national security if the claimant's identity and current employment was made public. No order under rule 94 of the Tribunal Rules (national security proceedings) was required.

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J McCluskey

Employment Judge

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11 June 2021

Date of Judgment

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11 June 2021

Date sent to parties