



## EMPLOYMENT TRIBUNALS

**Claimant:** Natasha Beckett  
**Respondent:** POhWER  
**Heard at:** East London Hearing Centre by CVP  
**On:** 21<sup>st</sup> June 2022  
**Before:** Tribunal Judge S Iqbal acting as an Employment Judge

### Representation

Claimant: In person  
Respondent: Ms Bewley of Counsel instructed by Stone King LLP

## RESERVED JUDGMENT

The complaint of unfair dismissal is well-founded.

## REASONS

*[All page references are to the agreed bundle]*

### Preliminary Issues

1. The case was called on at 10:00am, and all parties joined remotely without any technical difficulties.
2. The claimant attended in person, whilst the Respondent was represented by Ms Bewley of Counsel, instructed by James Barratt of Stone King LLP.
3. On behalf of the Respondent there were three witnesses, as follows:
  - i) Yvonne Rapp, HR Business partner
  - ii) Elyzabeth Hawkes, Deputy Chief Executive
  - iii) Julie Born, The People Director for the Respondent.

4. I was provided with an agreed bundle [1-1581 pages], separately served statements for the claimant and three witnesses, together with the case of **Sawar v SKF UKEAT/0355/09/DM**, Time of in Lieu (TOIL) Policy and written submissions prepared by Ms Bewley.

5. I was directed to read the witness statements and consider the documents highlighted within the written submissions of Miss Bewley and the Claimant's statement.

6. At the outset the Claimant stated that she wanted to call witnesses who wished to give evidence anonymously as they were still employed, and their evidence would be relevant to the issues raised. However, on behalf of the Respondent, Miss Bewley objected as she stated it would be unfair to the Respondent and further that the HR department of the Respondent allowed for employees to raise any issues of concern to them.

7. I note there were no witness statements to set out the remit of such evidence, neither was there any prior application made to the Tribunal or notice of such a request to any of the parties in these proceedings.

8. Having regard to the principles contained in the overriding objective, particularly, ensuring that this case is dealt with fairly and justly, and to ensuring that the parties are on an equal footing, I refused this to admit such evidence as it would be unfair and prejudicial to the Respondent to allow in such evidence, which they would not be in a position to respond to. I considered that there had been more than sufficient time for these issues to be ventilated by the claimant in the run up to the hearing.

9. On behalf of the Respondent, Miss Bewley highlighted that given the length of the bundle, the reading time and the number of witnesses to attend, the Tribunal would struggle to complete the hearing in one day. I however, provided a strict timetable to ensure the matter could be finished within the allotted time and despite this the hearing concluded at 5.45pm.

## **Introduction**

10. POhWER is a company limited by guarantee and charity that provides information advice and statutory and non-statutory advocacy services to people with disabilities or who are vulnerable and disadvantaged.

11. The claimant commenced employment with POhWER, on the 13<sup>th</sup> June 2005 and her most recent role was Service Manager of the Respondent's Pan London branch. The claimant's line manager from the 1<sup>st</sup> April 2017 was David Beer, Regional Manager (London and West Midlands).

12. The claimant resigned on the 21<sup>st</sup> October 2021. The basis of the claim is constructive unfair dismissal as the Respondent's actions constituted a breach/es of the implied duty of trust and confidence. In particular that the Respondent had failed in its duty to provide a suitable working environment free from bullying and harassment and other unacceptable behaviour by her line manager and the duty to reasonably and promptly afford the Claimant a reasonable opportunity to redress her grievances.

13. I heard evidence from the claimant as well as the three witnesses on behalf of the Respondent, Ms Hawkes, Ms Rapp and Miss Born Each of the witnesses adopted their witness statements, and then subject to cross-examination, at the end of which, I heard submissions by both, Miss Bewley and the claimant.

14. I have carefully considered the contents of all the statements, evidence that I was referred to and the submissions of both parties. In my reasons below I have not referred to each point raised or to every document referred to, but I have dealt with the points and evidence that are relevant to the issues that I must decide.

### **Findings of Fact**

15. The claimant started her employment with the Respondent on the 13<sup>th</sup> June 2005 as an NHS Complaint Advocate and progressed to Service Manager of the Respondent's PAN London Branch. Mr. Beer became her line manager from 1<sup>st</sup> April 2017.

16. In dealing with the issue of credibility. I considered the Claimant to be an honest witness who sought to tell me the truth. Her perception was sometimes influenced by the strength of her feeling regarding this case which, resulted in an unfocused presentation of relevant facts.

17. Ms Hawkes gave factual evidence about a number of events, including the 2019 email, which she considered 'strongly worded' and inappropriate. I note as the line manager (and previously his peer, having worked together as regional managers) she was not at the receiving end of Mr Beer's management style, and I therefore consider her evidence that she was understated in her descriptions of problems with Mr Beer.

18. Ms Born's evidence was based on HR files, pre 1<sup>st</sup> December 2020, which was when she joined the Respondent, I therefore I find her evidence limited to post December 2020, as she admits that there are certain matters not clear from the files before this day, such as why mediation was not pursued following the 2019 grievance. I also do not accept as credible that having worked as a HR professional for over 20 years, she did not consider the frequent emails she was receiving from the claimant after the grievance in May 2021, as demonstrating the claimant wanted some form of resolution to the matters she had raised.

19. Ms Rapp's evidence was limited to the grievance raised in May 2021; however, I have not found her evidence consistent or credible on the one material fact that she considered the claimant had not raised a formal grievance, nor did she consider her subsequent actions in relation to the continues email exchange led her to believe the claimant believed she was pursuing the grievance formally.

20. The claimant claims the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence.

21. The alleged breaches that I have distilled from the documents before me are as follows:

- (i) Failure to deal with grievance from October 2019
- (ii) Failure to deal with the grievance from February 2021
- (iii) Failure to provide a suitable and supportive working environment

22. I have considered whether this is a 'final straw case' rather than a single incident breach case resulting in the Claimants resignation on the 15<sup>th</sup> October 2021, whilst on sick leave.

23. The claimant details that she was subject to behaviour at the hands of her line manager, Mr Beer which amounts to bullying and harassment and that there her resignation was as a result of persistent failures by the Respondent's HR representatives and senior managers to treat the claimants grievances properly, seriously or in a timely fashion in accordance with their own grievance procedures. Following the Respondent's failures, I find as detailed below that Mr Beer's behaviour worsened as he appeared emboldened by their inaction and I am satisfied that this behaviour escalated during the discussions about the changes to the claimant's role and the restructure of the team

24. The first incident I note arose on the 30<sup>th</sup> October 2017 at a meeting that took place at the Respondent's Head Office in the presence of Elyzabeth Hawkes, Stephanie Linden, Mr. Beer, was observed becoming confrontational and aggressive, shouting at the claimant, he threw his chair back, pointed his finger at the claimant and Miss Linden and stormed out of the room slamming the door behind him. Miss Hawkes agrees in her statement that she observed this behaviour but could not remember the words spoke, agreed it was inappropriate and that she would speak to him. Mr Beer's behaviour was extreme and unwarranted especially from someone in senior management, and although Ms Hawkes states she spoke to him about it, it is surprising he was not held accountable and/or at the very least asked to offer an apology by the Respondent to those at the meeting.

25. On the 17<sup>th</sup> July 2019, at an audit of the PAN London contract held by the PAN London Commissioners covering twenty boroughs, Mr Beer did not invite either the claimant or Miss Linden who were each responsible for half of the boroughs. It is unclear why he would not have invited them to the meeting given their position and relationship with the boroughs, especially as he did require their input during the day, as demonstrated by the fact that he did make a request for further information from them. Ms Hawkes points to an email [252], in which she states the claimant was made aware that it would only be senior management. However, even if that was the case that does not justify Mr Beer's behaviour, which I accept on the evidence of the claimant, was aggressive when he called her and led to Ms Linden refusing to contact him after being warned by the claimant.

#### *Email of 27<sup>th</sup> September 2019*

26. On the 27<sup>th</sup> September 2019, Mr Beer sent an e-mail to the entire PAN London team including the claimant, copying in Shona Twohig the Senior HR Manager, and Sandra Black, Head of Quality for the Respondent. The e-mail sent on a Friday, made accusations against the team of fraudulent practices. The email was escalated by both the claimant and Miss Linden, as well as Miss Twohig and Miss Black as it was deemed inappropriate.

27. On the 11<sup>th</sup> October 2019, Mr Beer e-mailed the claimant and Miss Linden in relation to workflow stating as follows *“This week has been challenging and balancing ‘needs to know’ ‘nice to know’ has been non-existent...”* The tone of the email is certainly abrupt and sarcastic and not one expected in a professional environment.

28. The claimant, Miss Linden and four others’ from the team raised individual grievances as a result given Mr Beer’s aggressive style of communications [280-292]. The claimant and Miss Linden had separate meetings arranged for 16<sup>th</sup> October 2019 with Miss Hawkes and Miss Twohig which was delayed until the 18<sup>th</sup> October 2019. On the 14<sup>th</sup> October 2019, Miss Twohig confirmed that Mr. Beer had been made aware of complaints raised by the claimant and her team, and on the 16<sup>th</sup> October 2019, the claimant provided Miss Twohig with a summary of the team’s comments regarding the incident, as well as other general issues regarding Mr. Beer’s e-mails. The claimant confirmed the grievance she had raised was formal one in a phone call with Miss Twohig.

29. Following the e-mail sent by Mr. Beer on the 27<sup>th</sup> September 2019 [71-75] having raised the matter with Miss Twohig, the claimant was invited to a meeting on the 18<sup>th</sup> October 2019, she had a meeting with the East team on the 15<sup>th</sup> October 2019, and collated notes sent to Miss Twohig in an e-mail as to its content and timing, and the impact on the team members. [436-438].

30. It was clear from an e-mail dated the 22<sup>nd</sup> October 2019 sent by Miss Hawkes to Mr. Beer [455] that he was spoken to on the 16<sup>th</sup> October 2019. Miss Hawkes set out that they had spoken to legal advisers given the allegations against him concerned bullying, which was potentially gross misconduct offence under the organisations bullying and harassment procedure. Further that such allegations were taken extremely seriously by the organisation and there would be a full investigation of the allegations by the investigating officer, Roan Dyson. In the meantime, he was also invited to forward any e-mails that he would normally send to the PAN London IHCA Community Managers and staff, for Miss Hawkes to review before they were then forwarded on.

31. On the 22<sup>nd</sup> October 2019, an e-mail was sent from Elyzabeth Hawkes to both Miss Linden and the claimant to check in with them, but also reminding them to bring any PAN London contract issues to her. On the same day an e-mail was received by the claimant from Miss Twohig summarising a telephone call in which she set out as follows *“I asked if you were happy to allow P to continue to investigate the concerns you have raised in regard to David Beer informally at this time. I also asked if you have considered anymore as to whether you wish to make a formal grievance. You have said at the moment you are happy to allow for the wider ‘temperature check’ on David’s team to take place and that in terms of any future decisions in regards what you wanted to do personally, you had not reached this as yet and needed time to consider your options”*. This is consistent with other e-mails sent on the same day confirming similar conversations between Ms Twohig and Deborah Floyd [450] and Stephanie Linden [452].

32. Whilst, the claimant agreed to this, between October 2019 and February 2020 she received no updates on how the matter had been progressed. On the 22<sup>nd</sup> November 2019, the claimant and Miss Linden chased Miss Twohig for further updates.

33. From the emails I have before me, a meeting was set for the 4<sup>th</sup> November 2019, by Mr Dyson to discuss the matter with Mr Beer. In a letter to Mr Beer, dated the 26<sup>th</sup> November 2019 [475], Mr. Dyson set out that the outcome of the investigation. He set out that he had looked at the e-mail in question and a number of previous e-mails shared with the same staff grouping to understand if the e-mail in question was a one off or part of a pattern of communication. Having reviewed the e-mails and having interviewed Mr Beer, the conclusion Mr Dyson, reached, was that this was a one-off incident, and the previous e-mails were all appropriate evidencing clear direction support and sharing success. Further, he recommended that as an outcome to the investigation, a meeting between Mr. Beer and the two managers of the NHS Complaints and Advocacy Service was facilitated to agree a communication style for the ongoing management of the contract.

34. The Claimant was only emailed by Shona Twohig about the outcome of the grievance on the 7<sup>th</sup> February 2020 [526-529], attaching a letter from Mr Dyson addressed to her. The email contained an offer for independent structured mediation for the 17<sup>th</sup> February 2020. I find that there was a substantial, 3-month delay, between Mr Beer and the claimant being informed of the grievance outcome. Whilst I note that it was an informal grievance agreed to by the Claimant, she was still entitled to know the outcome of grievance she had raised which had led to the monitoring of emails from Mr Beer. This failure is in breach of the Respondent's own 'Grievance Policy and Procedure' [537-546], which highlights once a grievance was heard the outcome would be provided in writing, within 10 days.

35. Insofar as the investigation into the grievance is concerned, the investigation conducted by Mr Dyson, was directed at the email of the 27<sup>th</sup> September 2019 and more generally the tone of other communications from Mr Beer. I am satisfied on balance that the grievance was appropriately investigated by Mr Roan Dyson and a solution for mediation provided.

36. Furthermore, between the 27<sup>th</sup> September 2019 and 7<sup>th</sup> February 2020, the respondent put in place a process of monitoring e-mails sent by Mr Beer such that Miss Hawkes would receive any communication to be sent by Mr Beer, before she then forwarded it to Miss Linden and the claimant. What I note is that the process at some point was not effective as a claimant flagged to Miss Hawkes that some of the e-mails forwarded by her, such as that of the 21<sup>st</sup> January 2020 [518] were not appropriate. It appears Miss Hawkes apologised and admitted that due to the volume of e-mails received daily, she had not been reviewing them and just forwarded to them. This demonstrated the nature of that precaution was ineffective.

37. It appears following the e-mail of the 7<sup>th</sup> February 2020, Shona Twohig was due to have a call with the claimant. I note in her witness statement the claimant highlights that she had expressed to Miss Twohig in a telephone call that she was not satisfied with the outcome and was not going to put herself through mediation as the process had impacted her health and well-being and she needed to accept that the executive team at POHWER were not going to deal with the situation and they would allow Mr. Beer to continue about his business as he saw fit and that as a result she felt exposed and vulnerable. Despite, the Claimant's response, the respondent did not nothing further to address her concerns and although the Claimant did not seek to raise a formal grievance at this stage, I find the inaction

of the respondent to be highly surprising and contrary to their duty to ensure a suitable working environment.

### TOIL

38. In May 2020 during lockdown, the claimant offered to print and post the teams post and made a request to Mr Beer for her Time Off in Lieu (TOIL) to reimburse her for the time spent out of hours preparing the team's post. The claimant accumulated over 16 hours of work; however, Mr Beer took issue with the request and only one day off (TOIL) was agreed.

39. On the 18<sup>th</sup> June 2020, the claimant again requested (TOIL) for time spent preparing the post; however, Mr Beer did not agree to this stating *"In my five years as a manager, managers reporting to me have never identified (TOIL) as an option"* [638]. The claimant therefore approached Miss Twohig given the tone of Mr Beer's email, which I find to have been curt and hostile.

40. I find it was reasonable that Ms Twohig agreed the claimant's request was reasonable and her intervention in assisting the claimant drafting an email is unsurprising. The email of the 18<sup>th</sup> June 2020, resulted in a response from Mr Beer, copying in Ms Twohig stating, *'this and perhaps other issues need to be aired I have included HR.....'*

41. On the 24<sup>th</sup> June 2020, Miss Twohig e-mailed the claimant and invited her to a mediation session to attempt to resolve the issue around TOIL. However, [693-697] the mediation of the 7<sup>th</sup> July 2020, was rescheduled on her request to the 15<sup>th</sup> July 2020. However, it was then cancelled by the Respondent [715] in an e-mail received from Miss Cathy Smith on the morning of 15<sup>th</sup> July 2020 without any explanation

42. When the claimant questioned this, she was told that Senior Management wished to attend the meeting and it would be rearranged. The meeting was never rescheduled and the claimant chased Miss Twohig for an update; however, received no substantive response, and was reassured that matters were being dealt by with Miss Hawkes.

43. The claimant records 36 occasions on which she called Miss Twohig for updates, and in December 2020 received an out of office message later being informed that she had left the Respondent and that Julie Born, People Director had taken over the role.

### Other Emails

44. I note there were a number of emails the claimant raised concern with as follows: On the 2<sup>nd</sup> February 2020 the claimant was notified of an IHCAS contract meeting where she had not been invited, even though she had built up a relationship with the Commissioner, and on the 4<sup>th</sup> March 2020, Mr. Beer announced to the team via e-mail that the claimant would no longer be working on the Thurrock contract without consulting her.

45. On the 13<sup>th</sup> May 2020 and 29<sup>th</sup> May 2020, the claimant received e-mails from Mr. Beer in relation to one of their contracts in Greenwich, in which he set out that the claimant's team had not been supporting the client's team properly.

46. On the 21<sup>st</sup> July 2020, Mr. Beer sent an e-mail wanting to know why printing procedures hadn't been followed, asking the claimant to respond within 2 hours.

47. On the 4<sup>th</sup> November 2020, the claimant had to stop one of her team members from being allocated cases whilst on annual leave. However, the claimant received an e-mail in response from Mr. Beer on the 6<sup>th</sup> November 2020 in which he questioned the decision.

48. During December 2020, the claimant was on annual leave and was aware that management issue involving a member of her team had cropped up which needed to be handled despite her being on holiday abroad.

49. I accept that on one hand they may be construed as instruction and/or direction on the issues raised, given the nature of the issues already raised by the claimant and other employees, I find Mr Beer's approach to have been unprofessional to the extent that his communication can be categorised as controlling and aggressive.

### Grievance February 2021

50. Mr. Beer e-mailed the claimant on the 12<sup>th</sup> January 2021, copying in Miss Born having compiled a number of e-mails [797-801], the Claimant had sent whilst on annual leave and stressed she wasn't to access her e-mails on holiday. He stated the e-mails raised issues of GDPR Regulations in relation to access of e-mails whilst the claimant had been on holiday in Turkey the previous summer and highlighted and he therefore asked HR to look into this.

51. Ms Born in her statement sets out that she had supported Mr Beer to write that email as he had, *'discussed with me that he was concerned she does not let go of things, was stressed and working on holiday which was not good for her, and he wanted for her to have a proper break.'*

52. The claimant reports that she had been in communication with Mr Beer about other matters the day before and additionally since she had come back from her holiday on the 21<sup>st</sup> December 2020, however he had not raised any of the issues flagged in the email. Given the timing and the way in which he had supported the email with attachments of screen shots of when she had accessed her email, caused the claimant great distress. I find her distress was warranted, especially given the Appellant's evidence about the way in which Mr Beer went about what reporting the matter via email without notice to the claimant, despite being in contact with her about other matters.

53. The claimant's evidence that having contacted Miss Black, she stated that Mr. Beer's e-mail was incorrect and encouraged her to contact Ms Born about Mr Beer's behaviour. On the 14<sup>th</sup> January 2021 [807], the claimant emailed Ms Born and a call was arranged for the 20<sup>th</sup> January 2021, when she spoke to Ms Born for over 2 hours. The claimant's evidence which, I accept was that she had highlighted all past grievances and the behaviour of Mr Beer in the last 5 years.



54. Ms Born in her statement provides no details about the call, but states that after this call, the claimant would send emails simply referring to the undertones in the emails, however she could not see any such thing, rather the emails related to her role. I accept that may have been the case as I find Ms Born was not familiar with past issues and had not been able to locate relevant HR files. Ms Born states she told her to raise things formally if she was concerned and directed her to the grievance procedure.

55. The claimant agreed to send further documentation in relation to her concerns regarding Mr. Beer's behaviour following a number of conversations with Miss Born, in which the claimant states she was reassured the claimant not to worry or fear about repercussions from Mr. Beer. The claimant finally agreed to put forward a formal grievance. Miss Linden agreed to raise a similar grievance, and an e-mail was sent on the 1<sup>st</sup> February 2021 [849-851], which clearly sets out the ongoing concerns around Mr Beer's communication with them individually as well as with the team and further the failure to deal with the 2020 grievance.

56. In an e-mail dated 10<sup>th</sup> February 2021 [851] Miss Born confirmed that she would take the matter forward formally and that a formal grievance hearing would be arranged, and an investigation carried out with an outcome to be provided. An invitation was received for a grievance hearing with Yvonne Rapp and Miss Born for the 21<sup>st</sup> March 2021. However, this was rearranged at the claimant's request given her workload. The meeting was eventually rescheduled on the 11<sup>th</sup> May 2021, and in the interim the claimant continued to provide Miss Born with various documents historic and recent relating to Mr. Beer's behaviour. Miss Born was also asked to forewarn the Claimant before Mr. Beer was informed of the grievance.

57. During this grievance hearing Miss Born confirmed they would search through all of Mr Beer's e-mails and compile everything before they informed him of the grievance. After the meeting, Miss Born e-mailed the claimant for recent examples of Mr. Beer's behaviour to be sent, and the claimant provided further e-mails of undermining conduct, accordingly.

58. Between the 30<sup>th</sup> April 2021 – 26<sup>th</sup> May 2021 [960 -1074], the claimant kept Miss Born updated as to further e-mails with Mr. Beer, in particular I have considered the documents at [372,375-384,398,399,404-406,413].

59. Miss Born in her statement explains that at Paragraph 19 of her statement that the claimant often provided her with a number of e-mails both before and after the grievance hearing, but it was difficult to get context as there was no particular order or structure to the production of the e-mails, and she would refer to one sentence at the end of a string of e-mails. She also states that whilst the claimant would forward e-mails to her highlighting perceived issues, the issues were not actually clear, and whilst the claimant had referred to undertones or that Mr. Beer had been making a dig at her, despite reading the e-mails thoroughly Ms Born did not construe them as bullying behaviour.

60. As already highlighted, I find Ms Born was not familiar with previous concern as to Mr Beer's communication style and further putting the claimant's complaint in context, I find that I am satisfied contrary to what Ms Born states that there was

a pattern of behaviour/communication, which was inappropriate and that certainly ought to have triggered further investigation.

61. Ms Born further highlights that the claimant was worried when told that Mr Beer would be informed about her grievance about raising her 'head above the parapet' and sets out in her statement at paragraph 21 that, '*so my view was to conclude this meeting, wait for any additional information to be provided and allow the claimant to consider what she wanted to move forward..*'. Further that the Appellant would inform her when she was ready to take things forward.

62. What I have noted, despite Ms Born stating the claimant was not pursuing the grievance is that none of the e-mails sent after the grievance meeting of the 11<sup>th</sup> May 2021, definitively state that she was not pursuing a formal grievance.

63. I have considered the claimant's action in raising the formal grievance in the first instance despite her reservations, as set out in her email to Ms Born [849] and the extensive time she invested in raising all relevant matters with Ms Born and Ms Rapp. I have also noted the claimant's evidence that after an incident at a meeting on the 10<sup>th</sup> September 2021 in relation to restructuring, when Mr Beer was seen shouting at her, that she raised at a meeting on the 16<sup>th</sup> September 2021, with Ms Hawkes and Cathy Smith, HR Business partner, that her grievance from earlier in the year as to Mr Beer's communications, had still not been dealt with.

64. I am satisfied that on balance the evidence from the claimant in its totality, demonstrates the claimant's belief that she had asked for a formal grievance to be raised. Additionally, I find on balance the claimant's distress, on finding out the grievance against Mr Beer had not been raised, which resulted in her being signed off for two weeks on the 20<sup>th</sup> September 2021, further corroborates her account and belief that the matter was being pursued.

65. I find that any inaction in not pursuing the matter was as a result of Ms Born's own misunderstanding, which is confirmed by the transcript at [1488] of a meeting on the 8<sup>th</sup> October 2021 between the claimant, Ms Born and Ms Hawkes.

66. The claimant was clear in her intention to pursue a grievance, as can be demonstrated by her continued communications with Ms Born, sending the email interactions with Mr Beer. Whatever the Respondent and her employee's perceptions were of the contents of the emails, the claimant had raised a clear grievance about the ongoing behaviour of Mr Beer, and it was their duty to pursue it in accordance with their grievance policy.

67. I find Ms Rapp's evidence as set out in her witness statement at paragraph 4, that she was 'quietly confident' the claimant had not indicated she was moving forward with the formal matter, to be ambivalent, especially given her actions in calling the claimant in attempts to reassure and encourage her after the meeting.

#### Incident 10<sup>th</sup> September 2021

68. Following the announcement on the 4<sup>th</sup> March 2021 of a restructure, the claimant sets out a number of further difficulties that arose with Mr. Beer which came to a head at a meeting on the 10<sup>th</sup> September 2021.

69. Ms Hawkes agreed she had witnessed Mr Beer's behaviour against the claimant, as confirmed in her statement at paragraph 22. Ms Hawkes sets out '*I know David felt the Claimant was being obstructive and that she was taking every opportunity to have a dig at him which is why he reacted as he did..*' further that as a result she had spoken to him about it, but he had stated that he found it difficult to engage with the claimant during the transition period and that he asked for HR support and oversight of the meetings.

70. However, this does not address the behaviour of Mr Beer or hold him accountable what appears to be a lack of appropriate behaviour in the workplace.

### Restructure

71. On the 4<sup>th</sup> March 2021, Mr Beer announced there would be a restructure and the claimant's role had been changed, and she would be working on a completely different contracts from the 1<sup>st</sup> April 2021.

72. On the 12<sup>th</sup> March 2021 the claimant attended a meeting with Mr. Beer and Penny Perschky, the Respondent's HR Consultant. The claimant raised the idea that of retaining her role for three months to give her time to understand the new contract she would be managing. She also observed that the training had been inadequate and requested further training before starting the new contract.

73. The second meeting was due to take place in April involving Miss Perschky and Mr. Beer; however, the meeting simply took place between the Claimant and Mr. Beer. On the 19<sup>th</sup> May 2021 Mr. Beer e-mailed the claimant demanding that all discontinued contracts being recorded were to seize immediately and noted that the executives would not be impressed. However, no further clarification was given.

74. On the 21<sup>st</sup> May 2021 the claimant corresponded with Miss Born about a complicated and demanding contract handed to her, and despite her objections and her lack of training, she felt unsupported by Mr. Beer.

75. In June 2021, she received an e-mail from Mr. Beer when she asked for training to be rearranged a week in advance. She forwarded the e-mail to Miss Born and referenced it on the 18<sup>th</sup> June 2021. On the 22<sup>nd</sup> June 2021 Miss Born updated the claimant on the telephone and stated she had spoken to Mr. Beer about his "*bullish approach*" and that he needed to provide a more supportive working environment, which Ms Born does not address in her statement and I find certainly supports the claimant's account of an ongoing grievance and inappropriate behaviour in the workplace.

76. On the 10<sup>th</sup> September 2021, Mr. Beer challenged the claimant in an aggressive matter at a meeting, in front of all managers in the London area, and on the 20<sup>th</sup> September 2021, he sent her an e-mail referencing the meeting but not apologising for his actions. I find these are clearly the actions of an individual not being held accountable by the Respondent for his behaviour and further supports the claimant's complaint that Mr Beer was unsupportive during the restructure. I find that the fact that there was a restructure in which she felt unsupported and not valued, did feed into her decision to resign but is not essentially the main reason for her resignation.

Resignation

77. As highlighted above the claimant attended a meeting on the 16<sup>th</sup> September 2021, when she discovered her grievance had not been pursued and this led to her being signed off for two weeks with work related stress.

78. Ms Born states that on the 4<sup>th</sup> October she had a meeting with Ms Hawkes to discuss the claimant having raised the issue of redundancy and she points to emails at [1307-1312], however these communications do not support the nature of the meeting that was being arranged. To the contrary they demonstrate the meeting was to be held whilst she was off sick using her private email, and that she was concerned about *'what David is aware of and what he will be informed of ?'* which I find lends weight to the claims that the claimant was concerned about Mr Beer.

79. On the 6<sup>th</sup> October 2021 the claimant returned to work and two meetings were held on the 7<sup>th</sup> and 8<sup>th</sup> October 2021 to discuss the Respondent's lack of progress on the claimant's grievance. During the first meeting Miss Born informed the claimant she had not progressed the matter at all, and stated that this because she had not received the evidence requested and had not realised the claimant had wanted to raise her grievance. She stated that she had asked the claimant to confirm if she wanted to raise her grievance and never received a response. The claimant disagreed with this, as she stated she had continued to ask for updates to her grievance and provided numerous e-mails and correspondence showcasing Mr. Beer's behaviour.

80. After the meeting Miss Born e-mailed the claimant and stated she had received the e-mail from the claimant dated the 11<sup>th</sup> May 2021 containing emails from Mr Beer. Miss Born further confirmed receipt of this during their meeting on the 8<sup>th</sup> October 2021.

81. The claimant was then signed off for further two weeks due to work related stress on 12<sup>th</sup> October 2021 and resigned whilst on sick leave on the 15<sup>th</sup> October 2021. I find that it is at this point in time, the claimant realised that her concerns were not being properly pursued she clearly cites the respondent's failure to address her grievance as the direct reason for her resignation. The claimant's last working day was the 17<sup>th</sup> November 2021, and she was transferred from sick leave to garden leave from 27<sup>th</sup> October 2021 to 17<sup>th</sup> November 2021. I find that in resigning, the Claimant was resigning in response to a wide range of events that had occurred over a period going as far back as the 2019 grievance.

82. On the 9<sup>th</sup> November 2021, it was announced there would be a restructure of senior management, and shortly afterwards Mr Beer announced he would no longer be working for the Respondent from the 18<sup>th</sup> November 2021.

83. On the 17<sup>th</sup> December 2021 the claimant received an e-mail from Miss Black inviting to a grievance hearing on the 23<sup>rd</sup> December 2021. She replied to Miss Black's e-mail to explain she could not attend as it was too close to the Christmas period. Whilst there were attempts to reschedule this on the 19<sup>th</sup> January 2022, the claimant again declined, and I find a little too late as it appears to come after the resignation of Mr Beer.

84. On 21<sup>st</sup> October 2021, the ACAS process started. ACAS issued a certificate on 22<sup>nd</sup> November 2021 and the ET1 was lodged on 21<sup>st</sup> December 2021. The claim is in time.

### **The Legal Issues**

85. At the outset, the nature of the case was clarified with all parties. The parties agreed that this was a constructive dismissal case and that the term relied upon was the implied term of trust and confidence. I have also considered whether this was a 'final straw case' rather than a single incident breach case. The burden of proof is on the claimant.

86. I was not assisted by a clear list of the legal issues to be determined; however, I have considered the following matters:

- (i) Has there been a breach of the implied term of trust and confidence?
- (ii) Is that breach fundamental? Does it go to the heart/root of the contract?
- (iii) Has the Claimant resigned in response to that breach?
- (iv) Has the Claimant affirmed the contract through delay or otherwise?
- (v) Even if the dismissal is constructive, is the dismissal unfair or does the Respondent have a potentially fair reason to dismiss? The Respondent says it has a fair reason of conduct or SOSR.
- (vi) If the Respondent has a potentially fair reason to dismiss, did it act reasonably or unreasonably in the circumstances and in accordance with the equity and substantial merits of the case (section 98(4) ERA 1996)?
- (vii) If the dismissal is unfair, what compensation should be awarded under the normal principles.

### **The legal framework**

87. Section 94 of the Employment Rights Act 1996 (hereafter 'the ERA 1996') sets out the right of an employee not to be unfairly dismissed by his or her employer.

88. In order to demonstrate a unfair dismissal the claimant must show that she has been dismissed. Section 95(1)(c) states that *'the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct'*.

89. In the case of **Western Excavating (ECC) Ltd and Sharpe 1978 IRLR 27** Lord Denning MR held that:

*"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the*

*contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then her terminates the contract by reason of the employer's conduct. He is constructively dismissed."*

90. Therefore, in order for the circumstances to entitle the employee to terminate the contract without notice, they must demonstrate a breach of contract by the employer, secondly that that breach is sufficiently important to justify the employee resigning; the employee must leave in response to the breach; and that the employee must not delay such as to affirm the contract. Lastly that the breach relied upon can be a breach of an express or implied term.

91. In **Mahmood v BCCI 1997 ICR 607** confirmed that *"the employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee."*

92. It is implicit in the case of **Mahmood v BCCI** that the conduct will amount to a breach of the implied term of trust and confidence and it would be sufficiently serious such that the employee would be entitled to resign and claim constructive dismissal. That position was expressly confirmed in **Morrow v Safeway Stores Ltd 2002 IRLR 9**.

93. There is a distinction between cases where the fundamental breach arises as a result of a number of incidents taken together and cases where a single incident by the employer is relied on as fundamentally breaching the contract. Where there is what is classes as a last straw case, the tribunal must, look at the entire conduct of the employer and in relation to the final act relied on in itself need not be a breach of contract, but must contribute something to the breach of contract see **Lewis and Motor World Garages Ltd 1985 IRLR 465** and **Omilaju v Waltham Forest London Borough Council 2005 IRLR 35**. In **Omilaju** it was said:

*'19. ... The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase 'an act in a series' in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.*

*20. I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour*

may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21. *If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.'*

94. It is an objective test when considering the gravity of any conduct rather than looking to the subjective reaction of an employee or opinion of the employer as to whether its conduct is reasonable or not see **Omilaju v Waltham Forest London Borough Council** and **Bournemouth University Higher Education Corpn v Buckland** [2011] QB 323.

95. **Bournemouth University Higher Education Corpn v Buckland** also held that once a breach of contract was established it could not be cured by subsequent conduct by of the employer but an employee who delays after a breach of contract may, depending on the facts, could be considered as affirming the contract thereby losing the right to treat him/herself as dismissed.

96. The proper approach is as set out at paragraph 55 where it was held that :

*'it is sufficient for a tribunal to ask itself the following questions:*

- (1) 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?*
- (2) Has he or she affirmed the contract since that act?*
- (3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
- (4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)*
- (5) Did the employee resign in response (or partly in response) to that breach?*

97. Where a dismissal is established section 98(1) ERA 1996 requires the employer to demonstrate that the reason, or if more than one the principal reason, for the dismissal was for one of the potentially fair reasons listed in section 98(2) of the ERA 1996 or for 'some other substantial reason'(SOSR). If they cannot do so, then the dismissal will be unfair.

98. If the employer is able to establish that the reason for the dismissal was for a potentially fair reason, then the employment tribunal must go on to consider whether the dismissal was actually fair applying the test set out in section 98(4) of the ERA 1996 as follows:

- '(4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
- (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
- (b) *shall be determined in accordance with equity and the substantial merits of the case.'*

## **Conclusions**

99. I begin my conclusions with some general observations, which include the way in which the claimant has presented her claim. I find that she has failed to properly set out in a chronological and ordered manner, the events/incidents she relies on either in her statement or in the very lengthy bundle which consists of documents often duplicated and not properly ordered, thereby making it difficult to pick through the relevant issues easily.

100. However, this does not detract from the claims she has put forward and the first question that I must consider is whether the respondent has breached the implied term of trust and confidence? I will need to decide if the respondent has behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. If I find that they have then I must decide whether the respondent had a reasonable and proper cause for such behaviour.

101. The claimant has not properly particularised the ways in which she says the respondent was in breach of the implied term, however, I consider the issues as set out below:

### **Has the respondent breached the implied term of trust and confidence?**

102. I find that the informal grievance in October 2019, was properly dealt with however, the claimant was not informed of it the outcome promptly in breach of the grievance policy. Further that the protection put in place for the claimant and her team during the investigation by way of monitoring emails, was ineffective as on more than one occasion she was simply forwarded emails which weren't checked.



103. I find this demonstrates a failure by the respondent in their duty to ensure a suitable working environment given the claimant continued to raise concerns as to her well-being.

104. Whilst the claimant in her statement claims she followed up the TOIL issue between May and November 2020, when she called Ms Twohig over 21 times, there is unfortunately no substantive evidence to corroborate the same. I am however satisfied that the respondent has failed to act in accordance with its own grievance policy in resolving issues raised by the claimant and indeed by Mr Beer in his email. The respondent has not been able to explain why mediation was not offered or followed up and I find this demonstrates a complete disregard for the claimant's concerns.

105. Mr Beer's behaviour as flagged by the claimant in a number of emails demonstrates his unprofessional manner and as set out above, I have categorised it as controlling and aggressive and relation to the incident of the 10<sup>th</sup> September 2021, Mr Beer was not held accountable despite senior managers being present.

106. This appears to demonstrate an ongoing tolerance for Mr Beer's behaviour by the respondent.

107. In relation to the grievance of 2021, I am further satisfied that even if Miss Born and Miss Rapp had understood the claimant not to be pursuing the grievance back in May 2021, the subsequent e-mails and continued complaints/issues raised about Mr. Beer ought to have alerted them to ongoing problems and to have made enquiries of the claimant to find a way in which to deal with the claimant's concerns, which appeared to be affecting her well-being.

108. Their failure to take firm action against Mr Beer demonstrates a lack of support for the claimant over a sustained period of time, cumulating in what appears to be a general lack of care towards the Claimant by the respondent.

109. In addition, whilst the claimant was given the opportunity to pursue the grievance of Feb 2021, it is clear that in accordance with the Respondent's grievance policy, the factfinding hearing investigation meeting with Mr. Beer should have been carried out within ten working days of the date of the grievance hearing; however, no such meeting took place. It appears that Mr. Beer announced that he would no longer be working for the Respondent on the 19<sup>th</sup> November 2021, and only on the 21<sup>st</sup> December 2021 was the claimant invited to attend a grievance hearing on the 23<sup>rd</sup> December 2021, which the claimant refused to attend.

110. I have considered the matters cumulatively and I find that they this goes beyond unreasonable behaviour by the Respondent. It represents a failure to deal properly if at all with, behaviour of those in a position of authority. I am satisfied that these are sufficiently serious to indicate that the Respondent was acting without reasonable and proper cause in a manner likely to breach the implied term of trust and confidence.

111. Therefore, to summarise and answer the five questions posed by Underhill LJ in **Kaur**:

- (1) 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?

112. I have set out in detail about Mr Beer's behaviour at the meeting on the 10<sup>th</sup> September 2021 and the claimant's discovery on the 16<sup>th</sup> September 2021, that she had not heard back in relation to her grievance, which caused her a great deal of distress. I am satisfied on balance that the claimant's actions in being signed off on the 20<sup>th</sup> September 2021 are consistent with her beliefs that she felt let down, and ultimately the reason for her resignation.

- (2) Has he or she affirmed the contract since that act?

113. The claimant returned to work on the 6<sup>th</sup> October, after being signed off for 2 weeks after she found out the grievance had not been pursued. Two meetings were held on the 7<sup>th</sup> and 8<sup>th</sup> October 2021 to discuss the Respondent's lack of progress of the grievance of February 2021.

114. I find on the facts presented that claimant being signed off within days of discovering, on the 16<sup>th</sup> September 2021 that her grievance had not been pursued, through to the act of returning to work on the 6<sup>th</sup> October 2021, did not cause her to affirm the contract especially as she made clear at the meeting of the 6<sup>th</sup> and 7<sup>th</sup> October that she would need time to consider her position. I am further satisfied that she was further signed off for a further two weeks on the 12<sup>th</sup> October 2021 and resigned whilst on sick leave on the 15<sup>th</sup> October 2021.

115. Therefore, I am satisfied that the time between the most recent act/omission of the respondent and the claimant's resignation did not affirm the contract.

- (3) If not, was the act (or omission) by itself a repudiatory breach of contract?

116. In response to this question, I find that this is not a single act case.

- (4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation.)

117. I am satisfied that the Claimant has established on the facts that the lack support and failure to deal with her grievances, the failure to address her concerns and her working conditions under her line manager and to provide a suitable work environment were such that they amounted cumulatively to a breach of the implied term.

- (5) Did the employee resign in response (or partly in response) to that breach?

118. I find that the conduct of the Respondent was the reason for the resignation of the Claimant in particular, the claimant's discovery on the 16<sup>th</sup> September 2021, that her February 2021 grievance had not been dealt with was the final straw for the claimant, in a long line of failures by the Respondent to properly deal with any grievances she had raised about her line manager and therefore provide her with a suitable working environment.

119. Whilst the respondent told the claimant that they would pursue the grievance thereby remedying their failure. I am satisfied that this was a statement of future intent. Once there has been a repudiatory breach (as there was in this case) I find it is not open to an employer, by curing the breach, to preclude the employee from accepting the breach as terminating the contract. In other words, the respondent continued to be in breach of the implied term by reason of a failure to pursue the formal grievance and the indication of an intention to cure the problem after the meeting in October 2021 would not prevent the claimant from resigning in response to that breach.

120. I find there was no potentially fair reason for the dismissal, having considered the ET3 and particularly, paragraph 25 of the grounds of resistance[37], where I note that the Respondent makes a bare denial of unfair dismissal, but no actual reasons have been advanced, and in these circumstances, I find there was no fair reason for the claimant's dismissal.

121. I am satisfied the claimant was constructively unfairly dismissed, and she is entitled to a remedy.

122. I have considered the schedule of loss as set out in the bundle at pages 50-51. Whilst, the claimant claims a basic award and a compensatory award, I note that the claimant obtained new employment promptly after her resignation but claims the salary difference and it is difficult to see how she would be awarded more than the basic award in those circumstances. I accept that the claimant's evidence that she was not looking for other roles, simply that following her resignation; rather that she came by her new employment through a contact and following first contact with them she was offered a job quite quickly.

123. With that in mind is open to the parties to reach a settlement and avoid a remedy hearing keeping all issues in respect of remedy open. Given my observations above, the claimant should understand that it does not automatically follow from the fact that she has succeeded in her claim that she will be awarded the sums in her schedule of loss.

124. In light of these observations both parties to write to the Tribunal if they require a remedy hearing.

### **The Judgment**

125. The claim for constructive unfair dismissal succeeds.

**Tribunal Judge S Iqbal acting as an Employment  
Judge  
Date: 25 August 2022**