



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr D Titley

Amey Services
Limited

HELD AT Birmingham

ON

25 and 26 September 2026

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: Mrs C Thomas (Lay representative)

For the respondent: Miss D McGuire (Solicitor)

RESERVED JUDGMENT

The claimant's claim for constructive unfair dismissal fails and is dismissed

REASONS

Background

1. The claimant brought a claim for constructive unfair dismissal following his resignation with effect from 23 September 2022.
2. The respondent is a UK based infrastructure services and engineering company.

Evidence and documents

3. I heard evidence from the Claimant and from Trevor Capewell, a former colleague, for the Claimant and for the Respondent from Sarah Ward, People Partner and Keith Berry, Amey Site Manager HMP & YOI Brinsford. In addition, I was presented with a bundle of some 114 pages.
4. At the commencement of the hearing I sought confirmation from the parties as to whether the bundle was agreed. This was confirmed to me.

Issues

5. I set out below the list of issues which the Tribunal needed to consider and which the parties confirmed that they were in agreement with:
 - 5.1 Should the Respondent's application for an extension of time to file the Response be granted?
 - 5.2 If so, was the Claimant dismissed or did he resign, i.e. (a) did the respondent breach the implied duty of trust and confidence, i.e. did it, without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant? (b) if so, did the Claimant affirm the contract of employment before resigning? (c) if not, did the Claimant resign in response to the Respondent's conduct?
 - 5.3 The conduct the Claimant relies on as breaching the trust and confidence term is the delays in the investigation process and the Respondent's refusal to allow the Claimant to return to the job he was engaged in?
 - 5.4 If the Claimant was dismissed, what was the principal reason for the dismissal and was it a potentially fair reason for the purposes of section 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent relying upon misconduct and some other substantial reason namely the fact that the Respondent's client (the prison service) would not allow the Claimant to return to site on a temporary basis as the reason for dismissing the claimant ?
 - 5.5 was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called "band of reasonable responses"?
 - 5.6 Did the Claimant contribute to his dismissal ?
 - 5.7 If the Respondent is found to have unfairly dismissed the claimant, has the claimant mitigated his losses, and to what extent ?

Application for witness order

6. At the start of the hearing Ms Thomas made an oral application for a witness order compelling the attendance of Kate Wilde, Head of Security and Intelligence at HMP & YOI Brinsford. No written application had

been made previously nor was Ms Thomas able to put forward compelling reasons as to why the evidence of Ms Thomas was necessary. Given the lateness of the application and the fact that the Tribunal would be focusing on the action of the Respondent I refused the application made by Ms Thomas.

Application for Response to be accepted out of time

7. Ms Ward set out in her witness statement the reasons why the Response was not lodged on time. Namely, that the Respondent was not aware that a claim had been lodged, they only became aware of the claim when the Respondent was copied into an email from the Claimant. Contact was then made with the Tribunal and a copy of the Claim Form was requested. The Claim Form was provided on 17 March 2023. The Respondent then instructed Croner HR to act on their behalf and a Response was filed on 5 April 2023 along with an application for an extension of time to file the Response. It was submitted that the Response showed that the Respondent had reasonable prospects of defending the claim.
8. Mrs Thomas confirmed that the Claimant did not object to the Claim being accepted out of time.
9. After considering the representations made by Miss McGuire and taking into account that the Claimant raised no objections, I was satisfied that it would be in accordance with the overriding objection to accept the Respondent's Response out of time.

Facts

10. I make the following findings of fact :
 - 10.1 The claimant commenced employment with the Respondent on 2 February 2020.
 - 10.2 The Respondent is a UK based infrastructure services and engineering company. The Respondent employs around 11,000 people to design, maintain and transform strategic assets on behalf of national and local government. The Respondent has been contracted by the Ministry of Justice to provide Facilities Management Services to His Majesty's Prison and Probation Service (HMPPS) since 1 June 2015. These services are provided to 60 Prisons within the East and West Midlands, Wales and the Northeast, Northwest and Yorkshire Humberside.
 - 10.3 All employees working within the MOJ Facilities Management contract are required to obtain and maintain the relevant Prison Security Clearance.
 - 10.4 HMPPS also have an Exclusion Policy which regularises the exclusion of non-directly employed workers. Potential reasons for exclusion include the risk of harm posed to the safety and security of prisoners, supervised individuals, staff and other

- works. It is at the discretion of the Prison Governor or equivalent to evaluate and decide if an individual should be excluded on the grounds of security, safety and a duty of care to staff, prisoners and the individual.
- 10.5 Employees' contracts of employment state that if an employee's Prison Security Clearance is refused or revoked for any reason it is unlikely that they will be able to continue to work on site. The contracts of employment also state that if the Respondent is unable to deploy an employee onto another contract, they will be served notice of one month to terminate their contract of employment. Clause 2 of the Claimant's contract also contained such a clause.
 - 10.6 HMPPS also maintain an Exclusion List to ensure workers aren't excluded from one business unit and appointed elsewhere so as not to compromise the safety and security of the HMPPS estate.
 - 10.7 The Claimant was offered a position as a Contractor Escort with effect from 2 February 2020. In June 2022, the Claimant moved into the role of Stores Person based at Brinsford prison.
 - 10.8 At 4.30pm on 21 June 2022 the Claimant's line manager, Keith Berry, was notified by one of the site supervisors that there was possible breach of the local security strategy (LSS) by an employee of the Respondent which had been reported by another employee, Neil McMurray. Mr Berry was at a meeting on another site and there was not able to look into the matter straight away.
 - 10.9 However, on entering HMP Brinsford the following day Mr Berry was approached by Kate Wild, Head of Security for HMP Brinsford who was very angry and asked Mr Berry why a member of the Respondent's staff (who subsequently turned out to be the Claimant) had bought recording equipment into the establishment without permission. Ms Wild also queried why the Claimant had given one of her security staff wrong information in order to gain a gate pass. Mr Berry, who only had limited information at this stage, agreed to undertake an investigation.
 - 10.10 On arriving at the Amey office Mr Berry instructed the site supervisor, Warren Williams, to find out what had happened. Mr Berry then sought advice from Croner and was advised to gather witness statements from relevant witnesses including the Claimant.
 - 10.11 Initial witness statements were obtained on 23 June 2023 from: William Warren (who is part of the Estate Management Team); Sarah Leadbeater (Site Supervisor at HMP Featherstone) and the Claimant.
 - 10.12 During her interview Ms Leadbeater explained that on 21 June 2022 she had received a call from the Claimant in which the Claimant had explained to her that the CCTV recorder in the Stores at Brinsford had stopped working and the Claimant remembered, from when he worked there, that there were some old parts in the Works Storeroom at HMP Featherstone. Ms Leadbeater indicated that she had told the Claimant that if he

had permission from his manager at Brinsford then he could come and have a look and see if there was a suitable part at HMP Featherstone. When the Claimant arrived at HMP Featherstone the Claimant indicated to Ms Leadbeater that he has permission to take a recorder back if there was a spare one at HMP Featherstone. Ms Leadbeater said, in her statement, that she did not question this with the Claimant as the Claimant had worked on the site for many years and she trusted him to follow procedures. In the event it is not disputed that the Claimant duly took a recorder back to HMP Brinsford.

10.13 Mr Williams indicated in his statement that he had been asked by Mr Berry to look into the complaint raised by Kate Wild about a member of staff allegedly installing CCTV within the stores without the Respondent's knowledge. Mr Williams said that before he had had a chance to look into the issue the Claimant had called him and told him to go over to stores. When Mr Williams went over to the stores he noticed that the CCTV was working better than previously. The Claimant informed Mr Williams that he had acquired a box and connected it and wondered if it was ok. Mr Williams indicated in his statement that he told the Claimant that he thought so but was amazed that security had allowed him to bring the recording equipment onto the premises and asked him where he got it from. Mr Williams stated that the Claimant informed him that the head of security had said he could bring the equipment on to the premises after he told them that there was a fault with the CCTV and indicated that "*our friends at Featherstone*" had allowed him to take it from their stores. Mr Williams was surprised by this and asked again whether security had allowed the Claimant to bring the equipment onto site. The Claimant informed Mr Williams that he had been given a pass and that the security gate would now have a rectangular blue piece of paper which would have all the details on it. Mr Williams had thought that this was unusual as security would normally issue a letter and not a rectangular piece of paper. The Claimant asked Mr Williams if it was ok for the equipment to remain as it had a warranty. Mr Williams informed the Claimant that if it was in warranty it should be ok but he would need to let Mr Berry know.

10.14 Mr Berry interviewed the Claimant. During his interview the Claimant explained that the CCTV recorder box had been broken for about 10 months and it had been chased a couple of times but nothing had happened so he had called Ms Leadbeater as he was aware CCTV units at Featherstone that were no longer used and kept in storage. The Claimant said that he asked Ms Leadbeater if he could take the equipment if he could get permission. She said it was fine. The Claimant said that he then went to security and spoke to an Officer in Security (he could not remember the name) and explained that he could get some temporary equipment if needs be working in the stores. The Claimant was asked about whether he was aware of

security protocols and bringing stuff on site. The Claimant said that he was not 100% sure which was why he had gone to security. The Claimant was asked by Mr Berry whether he had made security aware that the device he was bringing onto site was a recordable device. The Claimant indicated that he had made security aware what the device was, where he was bringing from and what it would be used for. The Claimant indicated that the Security Officer did not have an issue with it and filled in the duplication book that they had in security and told him it was a pass to bring the device into the prison. The Claimant confirmed that he had had some security training and that he was aware that he could not bring in any equipment without permission. When asked by Mr Berry in the investigatory meeting why the Claimant had not approached him, Mr Williams or Ms Leadbeater the Claimant indicated that he did not know that he should contact them, he realised his error and when he got back to the stores he had contacted Mr Williams.

- 10.15 During cross examination the Claimant indicated that he had told security that he wanted to bring a desktop CCTV onto site but indicated that security had just put desktop on the pass. He could provide no explanation as to why those spoken to as a part of the investigation process had indicated that the Claimant had made no mention of the CCTV when seeking the pass. The only explanation put forward by the Claimant was that they were either being untruthful, covering up or had made an error.
- 10.16 During cross examination the Claimant accepted that he had made an error in that he should have spoken to Mr Berry first.
- 10.17 When pushed by Mr Berry ask to whether the Claimant contacted Mr Williams or whether it was the other way round, the Claimant confirmed that he spoke to Mr Williams, not that he contacted Mr Williams. The Claimant confirmed that he understood the possibility of a security breach and that's why he had obtained written permission. However, the Claimant did not have a copy of the written permission as he said he had left it at the gate. Mr Berry pointed out to the Claimant that the pass is normally in duplicate – one which is kept in security and the other one would have been provided to the Claimant.
- 10.18 Mr Berry then sought further advice from Croner on 23 June 2022 who advised that the Claimant should be suspended pending further investigations. The Claimant was duly suspended on 23 June 2022 and his suspension was confirmed in writing on the same day. The suspension letter made it clear that the Claimant was being suspended pending investigations in a breach of the LSS but that no decisions had been made regarding potential disciplinary.
- 10.19 Whilst carrying out his investigations it was brought to Mr Berry's attention that the information on the actual gate was not what the Claimant had indicated that he had asked for. As such, Mr Berry also interviewed Chris Lucas, the security officer who had issued the Claimant with a gate pass. In his statement Mr Lucas

indicated that the Claimant had approached him on 21 June 2022 and requested a gate pass for a desk top. When asked for further information the Claimant said it was something to do with the CCTV in the stores. Mr Lucas asked the Claimant why a contractor couldn't deal with it and the Claimant advised Mr Lucas that it was nothing to do with the contractors and that it related to a stand-alone system in the stores. Mr Lucas was told that there was a new one at Featherstone which would be fit for purpose. Mr Lucas indicated in his statement that he did not know that the Claimant had brought recording equipment onto site. He has written on the gate pass exactly what had been requested of him.

- 10.20 Although a copy of the gate pass was not in the bundle the Claimant's own witness, Mr Capewell, confirmed that the gate pass he saw only said desktop and not desktop CCTV.
- 10.21 On 27 June 2022 Mr Berry received a phone call from the Claimant who indicated that he had more information to give. As such, the Claimant was invited to attend a meeting on 30 June 2022 so that he could provide this information.
- 10.22 On 7 July 2022 the Claimant obtained a statement from Neil McMurray who had seen the Claimant on the day of the incident.
- 10.23 On 8 July 2022 Mr Berry received an email from Kate Wild, the Head of Security and Intelligence at HMP Brinsford in which recommended that the Claimant was no longer allowed on Site at HMP Brinsford. Ms Wild requested that the Claimant be moved to a different site.
- 10.24 Mr Berry wrote to Ms Wilde on 13 July 2022 to advise her that the Respondent was still investigating the incident into the alleged breach of the HMP LSS Policy. Ms Wilde was asked to reconsider her decision and allow the Claimant to return to the Brinsford site. Ms Wilde was informed that the Claimant remained on suspension and that the situation was causing the Claimant some anxiety because he was concerned about his future employment. Ms Wilde was asked to give the request her prompt attention. Mr Berry indicated to Ms Wilde that if he did not hear back from her by the next day he would conclude that she was not willing to accede to his request. On the same day Mr Berry wrote to the Claimant to advise him of the request he had made of Ms Wilde and that he would be in touch in due course.
- 10.25 Ms Wilde duly responded the next morning to indicate that her decision remained the same. Ms Wilde was concerned by the fact that the Claimant had indicated during the investigation that he had approval from the Head of Security which Ms Wilde indicated was not true. Furthermore, Ms Wilde was concerned that the Claimant did not inform Mr Lucas of the exact equipment he was taking out and changing and the exact circumstances occurring. In Ms Wilde's view this led Mr Lucas authorising different equipment to what was brought into the establishment and Mr Lucas believing different work was taking place to what

- the Claimant was actually completing. Ms Wilde indicated that she had not taken to decision to officially exclude the Claimant from JMP Brinsford. If the investigation outcome was that there was no breach or wrongdoing, Ms Wilde indicated that she would be happy to review the decision.
- 10.26 On 15 July 2022 Mr Berry wrote to the Claimant asking him to attend work on 18 July 2022 so that he could conclude his investigations. During this meeting the Claimant's suspension was lifted and the Claimant was informed of Ms Wilde's decision that the Claimant be removed from HMP Brinsford. Following the meeting Mr Berry emailed the Claimant with details of 3 alternative available positions: Contractor Escort, Handyman and General Building Operative that were available for the Claimant to take up at HMP Featherstone in line with Ms Wilde's wish that the Claimant not work at Brinsford pending the conclusion of the investigation.
- 10.27 The Claimant became absent from work citing stress and anxiety on 19 July 2022. Mr Berry wrote to the Claimant on 20 July 2022 to provide the Claimant with details of the Respondent's Employment Assistance Programme.
- 10.28 On 22 July 2022 the Claimant wrote to Mr Berry to indicate that he was seeking legal advice and seeking further details of what he had been suspended for, the date his suspension had started, what he was under investigation for, the policies he had breached and further details relating to his suspension. He also requested a copy of his letter of suspension and copies of all notes. Mr Berry responded the same day to say that the information would be provided to him if the matter proceeded to disciplinary hearing by the manager appointed to deal with the disciplinary hearing.
- 10.29 On 25 July 2022 Mr Berry wrote to the Claimant to remind him that his suspension had been lifted on 18 July 2022 and that he had been provided with details of the job options available. The Claimant was requested to return to work on 26 July 2022 and report to Louise Fowler Parks, the Site Manager at HMP Featherstone who would instruct him on his new role. A further copy of the Claimant's suspension letter was also provided to him.
- 10.30 On 26 July 2022 the Claimant indicated that he would take the alternative stores position at Swinfen Hall prison. In the event the Claimant did not return to work as he submitted a fit note on 25 July 2022.
- 10.31 The evidence of Mr Berry was that after the Claimant accepted the role the Claimant was contacted by the recruitment team and by his manager at Swinfen but they could not get hold of the Claimant as he was on holiday. However, the Claimant was due to start his new role at the end of August.
- 10.32 In relation to the investigation Mr Berry indicated that this was not concluded as he had obtained advice from Croner who indicated that there were gaps in the investigation which needed

to be filled. Mr Berry indicated that he tried to contact the Claimant during August so that the gaps could be filled. The Claimant's wife answered the phone and indicated that they were on holiday and that the Claimant would contact Mr Berry on his return.

- 10.33 On 26 August 2022 the Claimant tendered his resignation to People Services who advised the Claimant to contact his Line Manager in the first instance. The Claimant then emailed Mr Berry to indicate that he wished to give 4 weeks' notice to leave his employment. In his email the Claimant indicated that as he was not allowed to return to Brinsford Prison and there were no suitable positions open to me at other positions in the area he only had one option. The Claimant indicated that his employment would end on 21 September 2022 and he was covered by a fit note until 5 September 2022 he would take his accrued holidays for the remainder of the period.
- 10.34 Mr Berry acknowledged the Claimant's resignation the same day indicating that he was sorry to hear of the Claimant's decision and wished the Claimant all the best for the future. In his email Mr Berry noted that the Claimant's notice period was less than the 4 weeks' notice the Claimant was required to give and confirming the Claimant's outstanding holiday entitlement.
- 10.35 The Claimant raised no grievance about any of the matters he complains about to the Tribunal.

Applicable law

11. Rule 20 (1) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 provides:

“20.—(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An Employment Judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside”.

12. The EAT in the case of **Kwik Save Stores Limited -v- Swain and others [1997] ICR 49** set out the key principles on when an extension of time to file a response should be granted. The EAT held that:

"the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice."

13. Section 95(1) and section 136(1) of ERA provide:

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

...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

14. Section 98 (1) Employment Rights Act 1996 provides that in determining for the purposes of this part, whether the dismissal of an employee is fair or unfair, it is for the employer to show:

(a) *The reason (or if more than one the principle reason for the dismissal).*

(b) *That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

A reason falls within the subsection if it –

(b) *relates to the conduct of the employee,*

15. Section 98(4) provides that 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 reasons shown by the employer) -

(a) *depends on whether in the circumstances (including the size and administrative resources of the employers 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.*

16. The test as to reasonableness under section 98(4) is an objective one. The Tribunal must decide whether the decision to dismiss

was in the range of reasonable responses open to it – ***Iceland Frozen Foods -v- Jones [1982] IRLR 439.***

17. In the case of **Western Excavating (ECC) Ltd -v- Sharp [1978] QB 761** Lord Denning stated:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

18. In the case of case of **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978** the Court of Appeal set out 5 questions that should be asked to determine whether an employee has been constructively dismissed:-

- What was the most recent act or omission on the part of the employer which the employee says caused or triggered their resignation?
- Has the employee affirmed the contract since the act or omission complained of?
- If not, was the act or omission by itself a repudiatory breach of contract?
- If not, was it nevertheless a part of a course of conduct comprising several acts or omissions which, if viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?
- Did the employee resign in response (or partly in response) to that breach?

19. The case of **Polkey –v- A E Dayton Services Limited 1987 IRLR 503 HL** indicates that generally an employer will not have acted reasonably in treating a potentially fair reason as a sufficient reason for dismissal unless or until it has carried out certain procedural steps which are necessary, in the circumstances of that case, to justify the course of action taken. In applying the test of reasonableness in Section 98 (4) the Tribunal is not permitted to ask whether it would have made any difference to the outcome if the appropriate procedural steps had been taken, unless doing so would have been “futile”. Nevertheless, the **Polkey** issue will be relevant at the stage of assessing compensation. **Polkey** explains that any award of compensation may be nil if the Tribunal is satisfied that the Claimant would have been dismissed in any

event. However, this process does not involve an “all or nothing” decision. If the Tribunal finds that there is any doubt as to whether or not the employee would have been dismissed, the **Polkey** element can be reflected by reducing the normal amount of compensation accordingly.

20. Tribunals are also obliged to take the provisions of the ACAS Code of Practice on Discipline and Grievance Procedures 2009 into account in that it sets out the basic requirements of fairness which are applicable in most cases of misconduct.
21. Section 123(6) of the ERA states:

“where the Tribunal finds dismissal was to any extent the cause or contributed to by any action of the complainant, it shall reduce the amount of compensation by such proportion as it considers just and equitable having regard to that finding”.

Submissions

22. In her submissions Miss McGuire referred to the case of Western Excavating -v- Sharp and indicated that the onus was on the Claimant to identify the specific breach relied on to show that the Respondent no longer wished to be bound by the essential terms of his contract. Miss McGuire contended that the Claimant had not overcome this burden. The Claimant alleged that others were telling untruths and that his version was the correct version. However, the Claimant had not challenged his suspension and had been evasive with his answers in his initial investigation meeting with Mr Berry and during his cross examination. Notwithstanding this Mr Capewell had confirmed that the gate pass he had seen only referred to a desktop and not a desktop CCTV. The Claimant had been temporarily excluded from Brinsford at the request of Kate Wilde, Head of Security and Intelligence at HMP & YOI Brinsford pending the conclusion of the investigation. The Respondent had tried to have this decision overturned but without success. Miss McGuire asserted that the Claimant had jumped the gun and that there had been no repudiatory breach of his contract of employment entitling the Claimant to resign. In the alternative she argued that if the Tribunal found that the Claimant had been dismissed, the reason for dismissal was some other substantial reason namely the request of a customer for the Claimant to be removed from site. It was also submitted that the Claimant had contributed to his dismissal as he could have taken alternative roles and had failed to mitigate his loss.
23. Mrs Thomas submitted that the Claimant was a long term loyal employee who had tried to solve a problem in the stores. He had approached security and they had given the Claimant the necessary pass. It was agreed that an investigation was necessary but at no time had the Claimant been warned that disciplinary action could be taken. It was argued that the position offered to the Claimant was a temporary

one and that there was a fundamental breach of the implied duty of trust and confidence as the Respondent did not want the Claimant to return to his original job.

Conclusions

24. In reaching my conclusions I have considered all the evidence I have heard. I have also considered the bundle in its entirety as well as the oral submissions made by the parties' representatives.
25. I am satisfied on the evidence before me that there was no fundamental breach of any express or implied term of the Claimant's contract of employment so as to entitle him to resign and claim constructive dismissal.
26. The Claimant's representative accepted that there was a need to investigate the incident on 21 June 2022. I agree that there was a need to investigate matters given the complaint by HMPPS. The Respondent, when faced with the request to remove the Claimant from site, challenged this decision but was unsuccessful in its efforts. The Claimant was found another job to undertake which the Claimant accepted on 26 July 2022 and a start date was agreed for the end of August. As the Claimant had presented a fit note the Respondent was not able to conclude its investigation whilst the Claimant was off sick. The Claimant also took some holiday during this time and then waited 4 weeks – until 26 August 2022 – to tender his resignation. The resignation was on notice. The Claimant has failed to identify the most recent act or omission on the part of the Respondent which he says caused or triggered his resignation. If it was the transfer to a new role I am satisfied that by accepting the new role and then waiting for 4 weeks after acceptance to resign that that Claimant has affirmed the contract. In any event, given the provisions of clause 2 of the Claimant's contract of employment as referred to in paragraph 10.5 above I am satisfied that transferring the Claimant to a new role was not, by itself a repudiatory breach of contract, nor was it a part of a course of conduct comprising several acts or omissions which, if viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence.
27. In the circumstances, I am satisfied that the Claimant resigned and was not dismissed. As such, his claim for constructive unfair dismissal fails and is dismissed.

Employment Judge Choudry
Date 10th December 2023

Judgment sent to Parties on
