



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L. Doran

**Respondent:** Medicmart Ambulance Services Limited

## RECORD OF A HEARING

**Final hearing**

**Heard at:** Cambridge      **On:** 11 April 2023

**Before:** Employment Judge Boyes

**Appearances**

For the claimant: In person, accompanied by Ms N. Doran (sister)

For the respondent: Ms J. Veima, consultant

## RESERVED JUDGMENT

**The claimant's claim for unfair dismissal is not well founded. The claimant was not constructively unfairly dismissed.**

## REASONS

1. The claimant claims unfair dismissal (constructive). The respondent defends the claim.
2. After a period of early conciliation through ACAS from 26 March 2022 to 6 May 2022, the claim form (ET1) was lodged with Tribunal on the 17 May 2022. The respondent filed a response to the claim (ET3).

### **The proceedings/hearing**

3. This case was listed for a final (full merits) hearing on the 17 February 2023. Full disclosure of documents had not taken place prior to the hearing. In addition, there were two different versions of the bundle and so it was necessary to provide the claimant with time to go through the more comprehensive bundle prior to proceeding with evidence. The claimant requested that the Tribunal make an order for specific disclosure. Such an order was made (see below). The remainder of the hearing was therefore used to undertake case management, including identifying the issues that the Tribunal must decide, and further case management orders

were made. The parties were informed that they must be fully prepared for the final hearing.

4. In terms of specific disclosure, I ordered that the respondent was to disclose to the claimant all documents held by the respondent, whether on the claimant's personnel file or elsewhere, which were created at the claimant's appraisal which took place on the 30 November 2021. This was to include a complete copy of every version of the appraisal form and any minutes and notes, whether handwritten or typed, that were taken. If there was more than one version of any document then each and every version was to be disclosed. I gave the respondent permission to rely upon a supplementary witness statements dealing with any matters arising from that disclosure.
5. The claimant gave oral evidence. She adopted her statement of 11 April 2023. She was cross examined by the respondent and asked questions by me.
6. The respondent called Helen Minnis, Finance and HR Director and CQC manager. She adopted her witness statement of the 22 March 2023. The respondent also called William Capes, Operations Manager. He adopted his witness statement of the 24 October 2022. Both were cross examined by the claimant and asked questions by me.
7. Both parties made oral closing submissions.
8. I reserved Judgment as there was insufficient time on the day of the hearing to give judgment and oral reasons.

## **Documents**

9. The Tribunal had before it a bundle of 138 pages as well as witness statements.

## **Issues to be determined**

10. The List of Issues were identified at the case management hearing as follows:

### **The Issues**

#### **1. Unfair dismissal**

##### **1.1 Was the claimant dismissed?**

##### **1.1.1 Did the respondent do the following things:**

1.1.1.1 Fail to definitively inform the claimant whether she was able to continue to work lawfully and safely after it became apparent that the claimant may not have had undertaken the necessary training to continue to undertake the role;

1.1.1.2 Fail to provide the required training;

1.1.1.3 Verbally agree that the claimant could work 35 hours per week and one weekend in four at her appraisal on the 30.11.21. If found that there was such a contractual agreement did the Respondent then unilaterally vary that contract.

1.1.2 Did the above breach the implied term of trust and confidence?

The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did the Respondent vary the terms of the contract that the claimant says was agreed verbally on the 30.11.2021?

1.1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

1.1.5 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.1.6 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2 What was the reason or principal reason for dismissal -what was the reason for the breach of contract.

1.3 Was it a potentially fair reason?

1.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

## **Findings of Fact**

11. Where there is no dispute between the parties as to a particular fact, my findings of fact are recorded below without any further explanation. Where the facts are not agreed by both parties, I have explained why I prefer one party's account over the other. Where the facts are not clear, I have explained why I have made the finding of fact concerned.

12. My findings of fact are as follows:

### The respondent

13. The respondent operates an ambulance service.

### The claimant

14. The claimant was employed by the respondent as an Ambulance Care Assistant. Her employment began on 20 June 2019 [36]. When her employment began she was on a zero hours contract [36-38]. In her contract, her job title was specified as First Aider [36].

Chronology of Events

15. On 13 March 2020 the claimant was awarded a QA Level 3 Certificate in First Response Emergency Care by ALR Training Ltd [42]. It states on the certificate;

*This certificate is valid for 3 years  
Refresher training is recommended as follows*

*BLS annual refresher 1- due 13 March 2021  
BLS annual refresher 2 - due 13 March 2022  
Requalification - due before 13 March 2023*

16. On 22 September 2021, Joshua Flanagan, Education and Development Manager, wrote an email to employees about basic Life Support and Intermediate Life Support refresher training [45-46]. Dates for various training sessions was provided from 30 September 2021 to 11 October 2021 with a request that individuals informed him of the session that they wished to attend.
17. In or around September 2021, a newsletter was sent to employees [48]. At the end of that newsletter, it states that the respondent was going to be offering some permanent contracts, the details of which were on a separate sheet.
18. The separate sheet is headed 'Contracts' [49]. In that document the respondent states that it would like to offer the recipient a permanent contract. It then provides three options for the individual to choose from as follows:

"Option 1

*Stay on zero hours contract to suit the needs of the business*

Option 2

*16 hours guaranteed to suit the needs of the business. Includes working 1 in 4 weekends with a weekend rate increase of 1 and a quarter per hour.*

Option 3

*35 hours guaranteed to suit the needs of the business. Includes working 1 in 2 weekends with a weekend rate increase of 1 and a quarter per hour."*

19. There is a completed 'Contracts' form signed by the claimant on the 29 September 2021 [51]. This states that the claimant chose option 3. Underneath Option 3 "Tues Wed Thurs" is handwritten in handwriting which appears not to be the claimant's handwriting.
20. On 6 October 2021, Emma Message, HR Administrator, sent an email to employees about a previous CQC visit [47]. This flagged up that one of the concerns raised was that not all staff had completed their online training. This referred to it being company policy for training to be completed with 3 months of an individual's start date.
21. On 19 November 2021, Helen Minnis wrote to the claimant [52]. The letter states that she was confirming the changes to her employment contract which would take effect from 1 December 2021. It is stated that her minimum of 35 hours per week would be variable, that she will work a minimum of every other weekend (Saturday and Sunday). The claimant was asked to return a signed copy of the letter by the 30 November 2021. The claimant did not return a signed copy of this letter to the respondent.

22. On 30 November 2021, the claimant was appraised by Helen Minnis. There is a dispute between the parties as to what, if anything, was agreed regarding the claimant's hours of work going forward.
23. The claimant states that it was agreed at her appraisal that she would work full time hours on Tuesday, Wednesday and Thursday as well as one weekend per month with any additional hours by mutual agreement. The claimant states that she and Helen Minnis each took away from that meeting the unsigned contract with notes made on it so that Helen Minnis could arrange the amendments needed prior to the contract being signed.
24. The respondent's position is that it was not agreed that the claimant could be on a 35 hour contract but only work one weekend in four. William Capes stated in oral evidence that the reason the respondent took the stance that there was to be no deviation from the three options originally offered was because other staff members were also requesting a range of variations and so they decided to stick with the three options.
25. Helen Minnis' evidence is that, at her appraisal, the claimant did mention that she would not be able to work one weekend in two and she proposed that she be put on a 35 hour contract. Helen Minnis states that she told the claimant that they would not be able to accommodate that request but that the options should be discussed outside the appraisal meeting as it was not the appropriate place to have discussions about working hours and contracts. She states that there was definitely no verbal agreement made in relation to working hours during that meeting.
26. In terms of documentary evidence relating to the appraisal, the Tribunal has been provided with the Preparation for Appraisal form [126-127], the Performance Appraisal form [128-130], Helen Minnis' handwritten notes from the appraisal meeting [132] and the typed note of the meeting [134-135]. None of these documents make any reference to the claimant's working pattern or changes to the terms of her contract.
27. In her witness statement, at paragraph 7, Helen Minnis details what action was taken by the respondent to ensure that all documents relating to the appraisal were disclosed following my order for specific disclosure. Having considered those documents that have been disclosed and the witness evidence that I have heard, I am satisfied on the balance of probabilities that all relevant documents have been disclosed. There is nothing in the evidence before me to suggest otherwise.
28. A copy of the letter of the 19 November 2021 has been provided with the claimant's handwritten notes on it [138]. The claimant accepted in live evidence that this was her handwritten notes. By the first bullet point the claimant has written "Tues/weds/Thurs 6.6". The claimant has crossed out "a minimum of every other weekend" and written "weekend a month". This document demonstrates the claimant's preferred terms but it does not show that this was agreed between the parties.
29. The claimant asserts that it can be seen from the diary entries and messages provided to the Tribunal that from December 2021 her working pattern showed that she was now working as per the amended contract. Before November 2021 she was working a total of around 36 hours per week on Monday, Tuesday and Wednesday. From November/December 2021 onwards she worked on Tuesday

Wednesday and Thursday plus one weekend in four which would work out at 36 hours or more as the number of hours in a shift is not set.

30. On the basis of the witness evidence and documentary evidence before me, I am not satisfied that any agreement was reached between the claimant and the respondent regarding the terms of the claimant's contract at the claimant's appraisal meeting on the 30 November 2021. I accept that the claimant raised the issue at her appraisal. However, that is not the same as the respondent confirming that the terms that she sought were agreed. The respondent had a reason for not deviating from the three options provided. When the content and sequence of the correspondence from the respondent regarding the new contracts is considered in the round, the documents before the Tribunal support the respondent's position that the contract was not verbally amended at the appraisal meeting. None support the claimant's position that an amendment was agreed.
31. Whilst the claimant may have changed the days of week that she worked in December 2021 this does not demonstrate that the terms that she sought were ever agreed; she was working three days per week whilst on her zero hours contract. She could apply for whatever shifts were available on whatever days she wanted even if on a zero hours contract.
32. The claimant wanted her contract to be issued on particular terms, that is 35 hours per week working one weekend out of four. The respondent was not prepared to offer her those terms. The claimant may have assumed that those terms would be agreed or that consideration would be given to her being offered those terms but that is not the same as an offer being made or an agreement being reached. I prefer the respondent's version of events, that is that no agreement was ever reached on any amendments to the terms of the claimant's contract.
33. There was a noticeboard in the office on which the former HR manager, Emma Message, had outlined the list of contract options that each staff member wanted as well as tick boxes identifying who had signed their new contract. In January 2022, the claimant informed Emma Message that she could not work one weekend in two and so she was moved from the list of those staff wanting to work 35 hours per week.
34. On 19 January 2022, the claimant wrote to Emma Message [53]. She stated that she wished to raise a formal grievance to being moved to a zero hours contract without consultation. She stated that had worked a very similar shift pattern for the past two years, that a verbal agreement was reached in November 2021 for the full-time shift pattern which she had been working since that date.
35. On 13 January 2022, the claimant asked where her new contract was for her to sign as she had become aware that other staff members had received one. In response she was told by Helen Minnis "I haven't even looked". She said that she also then noted that her name was removed from the full-time shift board to the zero hours board. Further she said that she had, on that date, received a letter dated 18 January 2022 that states that she was being moved to zero hours with 13 days' notice.

36. A meeting took place on the 19 January 2022 between the claimant, Helen Minnis and William Capes, Operations Manager [54]. The meeting was arranged in part because there had been some tensions between the claimant and Helen Minnis but there was also discussion about the claimant's contractual terms. The claimant stated that she was upset that she had seen that her name had been moved on the office whiteboard from the 35 hours contract section to the zero hours contract section. She was told that she had stated that she wanted 35 hours knowing that this required her to work two weekends in four and that the whiteboard was changed when it became apparent that it would not be feasible for her to do so. She was put to the zero hours section as they had not been able to have a conversation with her. There was then a discussion about the possibility of the 16 hour contract (option 2) but with the claimant working Tuesday, Wednesday and Thursday but only one weekend in four.
37. There was an email exchange between Emma Message and the claimant on the 19 January 2022 which resulted in the claimant stating that she did still wish to pursue her grievance and the grievance was in respect of how HR had handled matters by removing her from a previously agreed full time contract without consultation and then putting her on a zero hours contract without sufficient notice [58].
38. On 20 January 2022, Helen Minnis wrote to the claimant [55]. The letter stated that changes to the terms of her contract were being confirmed and that the changes would take effect from 31 January 2022. Her minimum hours of work would be 16 hours per week and would be variable, she would work one weekend in four (Saturday and Sunday) and her working week days will be Tuesday, Wednesday and Thursday.
39. On the 20 January 2022, the claimant wrote to Helen Minnis [56]. The claimant stated that there were conflicts with the changes to her contract that needed to be amended before she would be happy to accept [the changes to her contract]. She states that there is a 90 day statutory period provided by law for changes to contracts. Further she states that whilst it is said that she will be given a minimum of 16 hrs a week it had been verbally agreed that she would do a 30 hours a week rota, but her holiday pay is only based on a maximum 16 hrs working week. She states that her current contract that was verbally with Helen Minnis on 18 November 2021 was 37 hrs a week over 3 days a week (Tues Wed & Thurs) plus one weekend a month. She asked if these conflicts could be looked at and amended with approval by both parties and that once the contract was amended she would be happy to sign it.
40. There was a further meeting on the 20 January 2022 between the claimant, Helen Minnis, William Capes, Emma Message and Simon Royal, Team Leader [57]. There was a discussion regarding the claimant's proposed shift pattern. The claimant asked for what was discussed to be put in writing and stated that she would let the respondent know of her decision by the end of the week.
41. On 24 January 2022, Emma Message emailed the claimant [59]. She stated that, having sought legal advice, the respondent was continuing to implement the new system and that as the claimant was currently on a zero hours contract she would need to volunteer for advertised shifts that she is able to work.

42. On 24 January 2022, the claimant emailed Emma Message stating that if she was forced to work to the new rota without her full time contract in place that she would be working under protest [60].
43. On 27 January 2022, the claimant's solicitors wrote to the respondent [62-63]. They stated that an agreement had been reached that the claimant would have a full time contract, which she had been working for the past two years, and that the respondent had now changed the terms of her contract unilaterally.
44. On 4 February 2022, Joshua Flanagan wrote to employees regarding a level 3 safeguarding course [65]. He stated that completion of this course was now mandatory for all ambulance clinicians and that staff should remain compliant by undertaking the course by the 15 March 2022. He also stated that any staff members who remained non-compliant with the mandatory training that was set in 2021 should update their training so as to remain compliant and should speak to him if there were any difficulties with completing this so that they could discuss it and find ways to support them through it.
45. A message was sent by the claimant to the respondent on 1 March 2022. It is addressed to the 'oncall' address [136]. Helen Minnis was the person who answered the claimant's message on this particular occasion. The exchange is as follows:
- Claimant: *Hi can you tell me when the requalification for frec 3 will be taking place as current certificate will be out of date on the 13<sup>th</sup> of March?*
- Apologies refresher due by 13<sup>th</sup>*
- Oncall: *As long as you have a valid BLS and you kept cpd up date then certificate is valid for 3 years x*
- Claimant: *BLS annual refresher due 13<sup>th</sup> cpd is up to date along with all requested training*
46. On 9 March 2022 there was an exchange of messages between the claimant and William Capes [92]. The exchange was as follows:
- Claimant: *"Hi will...after yesterdays conversation re current bls certificate could you confirm if I have a valid one or not please.. for no other reason than to stop me overthinking it, I'm worried that come the 13<sup>th</sup> I will be practicing without valid certificates and I believe that responsibility lies with me*
- William Capes: *"I Lindsey what I will do is discuss this with Josh asap and get back to you and we will arrange assessments asap to get this completed due to operational demands currently on the business we will endeavour to get this completed ASAP but the qualification remains valid"*
47. On 15 March 2022, William Capes sent an email to the claimant [66]. It states *"Following my earlier phone call which wasn't answered and I left a voicemail, following you leaving mid shift. Im writing to check your welfare and make sure everything is ok. If you need any support as your line manager I'm here to talk with if needed. Please can you either respond to the phone call or this email just to confirm you are safe and well please"* [sic].



48. On 15 March 2022, the claimant's solicitors wrote to the respondent [69-71] laying out the claimant's position.
49. On 15 March 2022, the claimant's solicitors wrote to the respondent [68]. They stated that [the claimant's] life saving training had expired and that she had warned the respondent about this previously. They stated that the respondent has let the training lapse despite being aware of the need for its completion and so she is no longer in a position to professionally undertake her job. They state that, taken in conjunction with previous grievances and the issue that have arisen with her contract of employment, [the claimant] had no option but to resign which amounts to constructive dismissal.
50. In live evidence, the claimant stated that it was not clear to her whether or not she had a valid BLS certificate. This was because she mistrusted the respondent. She was worried that what she was being told was not correct. Others had done the refresher training before Josh went on leave.
51. On 25 March 2022, the claimant's solicitors wrote to the respondent [72-74] outlining the claimant's position regarding why she, unlike all other employees, had not undertaken the Basic Life Saving refresher training and that this was as a consequence of a failure on the respondent's part.

#### Contract of employment

52. The claimant's Statement of Main Terms of Employment dated 20 June 2019 includes the following clause [36]:

##### *"HOURS OF WORK*

*You have no guaranteed hours of work in any given week. Your actual hours to be worked each week will be as necessitated by the needs of the business and will be notified to you by your Line Manager. In some weeks you may not be required to work any hours. Payment will only be made for actual hours worked and therefore no payment will be made for weeks where you are not required to work. Breaks are unpaid and in line with the Working Time Regulations."*

#### Company Training Policy and Procedures

53. The respondent's Training Policy and Procedures contains the following [41]:

##### *"1. Professional Registration and Continuing Professional Development*

*It is a legal requirement that registered professional medical/clinical staff demonstrate ongoing competency in their specialty to enable re-registration. Individual members of staff are required to maintain personal professional accreditation and hold responsibility for ensuring that they personally maintain their registration and are responsible for their own learning.*

*Medicmart as a company will provide a CPD training evening in March/ April, which can contribute towards an individual's CPD. [...]*

*Any staffs who fail to attend mandatory training may be subject to disciplinary action or be judged to be ineligible to work. Accurate training records will be kept for CPD purpose within the office. Individual staffs are also responsible for maintaining their own CPD records and make these available for inspection upon*

*request. This policy will be reviewed on an annual basis, but may be updated before to meet any changes in legislation or business requirements.*

*As a company Medicmart strive to ensure our staff are continually looking to be the best that they can be, our ideal is that all staff are minimally qualification is FREC 3 and above, to achieve this.*

*New employees will be First aid trained and once they have gained at least 6 months experience Medicmart will put them the FREC 3.”*

## **The Relevant Law**

### Unfair Dismissal (constructive)

54. Employees with more than two years' continuous employment have the right not to be unfairly dismissed, by virtue of section 94 of the Employment Rights Act 1996 ("ERA").

55. The claimant claims constructive unfair dismissal within the meaning of s95(1)(c) ERA. The Tribunal has to decide whether there has been a dismissal in accordance with that section which states:

*95 Circumstances in which an employee is dismissed*

*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 his employer's conduct.*

56. In order to claim constructive dismissal, the employee must establish that:

- i. there was a fundamental breach of contract on the part of the employer;
- ii. the employer's breach caused the employee to resign;
- iii. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

57. The test for whether an employee is entitled to terminate his or her contract of employment is a contractual one. The Tribunal is required to determine whether the employer has acted in a way that amounts to a repudiatory breach of the contract, or has shown an intention not to be bound by an essential term of the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221).

58. The essential terms of any contract of employment include the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (*Malik v Bank of Credit and Commerce International Ltd* [1998] AC 20).

59. Conduct calculated or likely to destroy mutual trust and confidence may be a single act. Alternatively, there may be a series of acts or omissions culminating in a 'last straw' (*Lewis v Motorworld Garages Ltd* [1986] ICR 157). Individual actions may not in themselves be sufficient but taken together have the cumulative effect of such a breach (*Lewis v Motorworld Garages Ltd* [1986] ICR 157 CA).

60. When considering what could amount to ‘the last straw’, the Court of Appeal in *Omilaju v Waltham Forest London Borough Council* [2005] IRLR 35 held that the act or omission relied on need not be unreasonable or blameworthy (although it usually will be). However, it must in some way contribute to the breach of the implied obligation of trust and confidence. There must have been earlier acts or omissions of sufficient significance that the addition of a last straw takes the employer’s overall conduct across the threshold. An entirely innocuous act on the part of the employer cannot however be a final straw.
61. The Court of Appeal in *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978 set out guidance on the questions an Employment Tribunal would normally ask in order to decide whether an employee has been constructively dismissed. The questions are:
- 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 itself a repudiatory breach of contract?
  - iv. If not, was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term?
  - v. Did the employee resign in response, or partly in response, to that breach?
62. In *Lochuack v London Borough of Sutton EAT 0197/14*, Mr Justice Langstaff (the then President of the Employment Appeal Tribunal) stated:
- “The issue which needs to be addressed is whether there has been a repudiatory breach... If some of the alleged incidents are found not to have occurred, a tribunal must have regard to those which it has found did occur and ask objectively whether, in the particular context of the case, they amounted to a breach of contract and whether, in the particular context of the case, that breach was so serious as to be repudiatory. It may be that an employee puts up with a breach of contract which is, properly analysed, repudiatory because he would prefer to retain his employment rather than be cast adrift on the labour market. In such a case he might very well spend a period of time without taking any action, or actually take positive steps which would indicate that he wished the contract to continue notwithstanding the breaches which had occurred. But they would remain breaches. A failure to elect to treat a contract as repudiated does not waive such breaches... If a later incident then occurs which adds something to the totality of what has gone before, and in effect resuscitates the past, then the tribunal may assess, having regard to all that has happened in the meantime — both favourable to the employer and unfavourable to him — whether there is or has been a repudiatory breach which the employee is now entitled to accept. If so, and if the employee resigns at least partly for that reason, it will find in that case that there has been a constructive dismissal.”*
63. In *Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1, CA*, the Court of Appeal clarified that an employee who claims constructive unfair dismissal based on a continuing cumulative breach is entitled to rely on the totality of the employer’s acts notwithstanding a prior affirmation of the contract, provided that the later act

(the last straw) forms part of the series. The effect of the final act is to revive the employee's right to terminate his or her employment based on the totality of the employer's conduct.

64. The Tribunal may, in some circumstances, be required to use its judgement to decide whether a reason given in a letter of resignation is a genuine reason such as to give rise to a right to claim constructive dismissal [*Ishaq v Royal Mail Group Ltd* 2017 IRLR 208, EAT].
65. It is not necessary for an employee to expressly inform the employer of his or her reasons for resigning in order to show that he or she resigned because of the employer's breach [*Nicholson v Hazel House Nursing Home Ltd* EAT 0241/15]. There must, however, be sufficient evidence from which a Tribunal can infer the reason or reasons for the resignation [*Mruke v Khan* 2018 ICR 1146, CA].
66. It is for the employer to show the reason or principal reason for the dismissal, and that the reason shown is a potentially fair one within section 98 ERA.
67. If that is shown, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA).
68. In applying section 98(4) ERA, the Tribunal must not substitute its own view for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

## My Conclusions

69. For reasons that I have provided above, I have found that the respondent did not verbally agree that the claimant could work 35 hours per week and one weekend in four at her appraisal on the 30 November 2021. The agreed terms of the claimant's employment up until the point where she left her employment on the 13 March 2022 therefore continued to be as per the written terms of employment of the 20 June 2019.
70. It therefore follows that the respondent did not vary the terms of the claimant's contract at any point either with agreement or unilaterally.
71. In terms of the respondent's approach to the amended contracts offered, I do not consider that it behaved in any way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. The claimant wanted terms that were not being offered. The respondent was entitled to specify the terms of the amended contracts of employment that it was offering. The respondent organised meetings with the claimant to deal with her grievance. This did not result in the claimant being offered the contractual terms that she wanted, but that does not in itself mean that there was a fundamental breach of the implied term of trust and confidence. In this case I find that there was not.

72. It is plain on the face of the BLS certificate that refresher training was recommended by 13 March 2022 and requalification by 13 March 2023. There is nothing in the evidence before me to demonstrate that the claimant was in a position where she would have been unable to continue to work because of lack of training from 13 March 2022. The respondent informed the claimant by messages on two occasions that the certificate remained valid and that she was covered. What was said by the respondent in this respect was unambiguous. The respondent therefore did not fail to inform the claimant whether or not she was able to continue to work lawfully and safely. In this respect the respondent actions did not breach the implied term of trust and confidence.
73. There is nothing in the respondent's Training Policy and Procedures that prevented the claimant from continuing to work. No evidence has been adduced to show that the claimant would have breached any professional requirements or been breaking the law in any way by continuing to work after that date. Whilst the claimant states that she did not trust what the respondent was telling her regarding the validity of the certificate, what is said on the certificate itself is clear. The fact that some other employees had undertaken the refresher training before the claimant did not change the position.
74. I accept that the delay in providing the refresher training to the claimant was as a consequence of the logistical difficulties caused by the COVID 19 pandemic and fuel crisis. However, I do not consider that the delay in providing training to the claimant breached the implied term of trust and confidence between the claimant and respondent. There is nothing in the evidence before me to suggest that the respondent did not intend to provide the claimant with appropriate training. Some employees had already received that training whilst some others, like the claimant, had not yet received it. There is nothing in the evidence before me to suggest that the claimant had not received the training because of any bad faith on the part of the respondent. The fact that the claimant had not undertaken the refresher training did not prevent her from undertaking her role or compromise her position with any clinical professional body. In the circumstances, I find that the respondent did not behave in any way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent either in respect of training matters or how it dealt with the potential changes to contractual terms.
75. The respondent has not breached any express or implied term of the contract of employment with the claimant. It follows that there was therefore no fundamental or repudiatory breach of the contract of employment. Consequently, the claimant was not entitled to treat the contract as being at an end. The claimant was therefore not constructively dismissed. As there was no dismissal, there is no basis upon which an unfair dismissal complaint can be made. The complaint of unfair dismissal is therefore not well founded and is dismissed.
76. I apologise to the parties for the delay in providing this judgment and reasons.

Employment Judge Boyes

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Date: 4 July 2023

Reserved Judgment and Reasons Sent to The Parties On

6 July 2023

**FOR EMPLOYMENT TRIBUNALS**

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