EMPLOYMENT TRIBUNALS

Claimant: **Ms Viola Szekelyhidi**

Respondent: **Golders Green College & School of English Ltd**

Heard at: **Watford (In person)** **On: 27-28 November 2023**
7 December 2023

Before: **Employment Judge Bansal (sitting alone)**

Representation

Claimant: **Ms Robin Moira White (Counsel)**
Respondent: Mr Alan Williams (Solicitor)

JUDGMENT

1. The Claimant's claims for unfair constructive dismissal, unlawful deductions from wages and holiday pay are well founded and succeed.

2. By consent, terms of settlement having been agreed by the parties, the Respondent is ordered to pay the Claimant compensation in the sum of £39,208.47 (gross).

JUDGMENT having been given orally at the conclusion of the hearing, these reasons are provided following a request made by the claimant for written reasons in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013.

REASONS

Background

1. The claimant joined the respondent as a English Foreign Language (EFL) Teacher on 1 August 2004,working on a self-employed basis. From 1 April 2008 she became a full time employee of the respondent and remained in their employment until her resignation with effect on 3 May 2022 on the basis the respondent had committed repudiatory breaches of her contract of employment which destroyed the implied term of trust and confidence between her and the respondent.

2. The claimant issued two claims, the first on 25 December 2021 making claims for redundancy pay, unlawful deductions from wages, and unpaid holiday pay. The second claim was issued on 23 July 2022, for unfair constructive dismissal, unlawful deductions from pay and unpaid holiday pay. The respondent in their response disputed all claims.

3. At a Preliminary Hearing held on 24 October 2022 the two claims were consolidated. At a further Preliminary Hearing held on 17 November 2022 the claim for redundancy pay was withdrawn. The remaining claims for unfair constructive dismissal, unlawful deduction from wages and holiday pay were proceeded with. At this hearing the parties agreed a List of Issues to be determined at the final hearing, and also case management orders were issued in preparation for this hearing.

The List of Issues

4. The agreed List of Issues are set out below

4.1 Whether the claimant is entitled to the 13 days of holiday pay outstanding on the contract dated 1st April 2008

4.2 Did the respondent act in such a way as to fundamentally breach the claimant's contract of employment by acting in breach of the implied term of trust and confidence by;

(a) An unlawful change in contract without proper consultation;

(b) Refusal of a grievance complaint meeting raised in response to point a;

(c) Threatening emails sent to the claimant attacking her character;

(d) Demanding payment of legal fees with no legal basis, refusing to meet with the claimants representative until those legal fees were paid and threatening to take the claimant to court until such fees were paid;

(e) The events on 28th February 2022 in which the claimant was made to feel physically intimidated and threatened outside of her workplace;

(f) The repeated refusal of the respondent to respect the claimant's right to be accompanied at grievance complaint meetings leading to two different unresolved grievance complaints;

(g) These significant effects these actions have had on the claimant's mental health being;

(h) The lack of acknowledgement of any wrongdoing leaving the claimant with no confidence that the above events would not be repeated in the future;

4.3 If the claimant has been subject to unlawful deduction of wages over the period of 1st October 2021 to 28 February 2022 following an unlawful and not agreed change in her contract.

The Final Hearing

5. This was an in person hearing. The claimant was represented by Ms White of Counsel, and the respondent by Mr Williams, solicitor.

6. The Tribunal was provided with a chronology, cast list and an agreed bundle of documents of 437 pages. Documents referred to in the witness statements; the chronology and those referred to in evidence were read.

7. The Tribunal was presented with written witness statements from the claimant and supporting witnesses Mrs Nora AL Saadoon and Mrs Janice Jablonka. For the respondent, there were witness statements for Mr George Delmonte (Senior Registrar), Ms Mei Ling Delmonte (Director of Studies) and Mr David Simons Delmonte (DS), who at the relevant time was the Director and owner of the respondent. He did not attend to give evidence as he was on holiday in the Far East. All witnesses, (except for DS who did not attend) gave oral evidence and were cross examined. The Judge also asked questions of the witnesses to clarify matters.

8. There has been two surprising features of this hearing. Firstly, that Mr David Simons Delmonte (DS) did not attend the hearing to give evidence despite being a material witness for the respondent and having known of the hearing date since 17 November 2022. Mr Williams, who was recently instructed for this hearing said he only found out recently of his decision not to attend. Secondly, Mr Williams approach to cross examination, not only did he not cross examine Mrs Nora Al Saadoon or Mrs Jablonka, surprisingly, when he questioned the claimant he did not challenge the substance of the complaints and the conflicting evidence relevant to the list of issues; and neither did he put the respondent's case to the claimant. His short cross examination was limited to general points. Miss White, commented on this approach, which was not anticipated. However, Mr Williams confirmed he was content with his line of questioning and did not consider it necessary to ask further questions of the claimant, despite a further opportunity given by the Judge.

9. At the conclusion of the parties' evidence, both representatives provided oral submissions. Mr Williams submission was made in one sentence, that *"the claimant's claims lack merit and should be dismissed"*. In contrast Miss White made detailed submissions, contending that each of the alleged breaches were repudiatory on their own, and that the last incident of 28 March 2022 was advanced as the "last straw" entitling the claimant to resign. Further, Miss White made a costs application against the respondent on the basis of their unreasonable conduct in defending the claims and for lying about the existence and applicability of a second Employee Handbook, disclosed in preparation for this case.

Findings of fact

10. Having considered all of the evidence, on the balance of probabilities, the Tribunal made the following findings of fact. Any reference to a page number is to the relevant page number in the bundle.

11. The respondent, which has been established since 1941, provides English courses for overseas students. It is based in Golders Green in London. From the information about the respondent's ownership as recorded at Companies House, it shows that Mr David Simons (Delmonte) ("SD") was the Director from 7 May 2009 to 21 April 2023; Ms Mei Ling Choo Delmonte ("MLD") was Secretary from 6 November 2020 to 21 April 2023, and Mr George Delmonte ("GD") was Director from 1 November 2020 to 21 April 2023. From 20 April 2002, Mr Tal Israel, the current and sole owner was appointed as a Director on 20 April 2022. At the date of the claimant's employment with the respondent the respondent business was run by Mr SD, Mrs MLD (ex-wife of SD) and their son Mr GD.

12. The claimant started with the respondent on 1 August 2004 as a self-employed English Foreign Language (EFL) teacher working full time hours. On 1 April 2008, she became a full time employee of the respondent, working under a contract of service. The claimant taught primarily foreign students and was responsible for teaching classes of usually 10-20 students, although the number of students did fluctuate.

13. The claimant signed a contract of employment dated 1 April 2008, which confirmed her full time working hours, her agreed salary at £17,000 per annum. (p118-119) The claimant's last job description was revised on 30 May 2012. (p122)

14. In her own evidence the claimant has confirmed that since August 2014 her training responsibilities had gradually diminished and she reverted back to her primary responsibilities as a EFL teacher.

15. It must be pointed out that despite the issues which caused the claimant to resign, the respondent held the claimant to be an "excellent and valued teacher". In evidence, Ms MLD confirmed the claimant was a good worker, with whom she enjoyed a professional relationship as colleagues and friends. until the incident of 28 February 2022.

March 2020

16. Up until the period of the first national lockdown due to the pandemic which started from 23 March 2020, the parties accepted there were no issues between them. They had enjoyed an amicable and professional working relationship.

17. During the lockdown period the respondent remained closed, and the staff were placed on furlough leave. The claimant returned to work in or around October 2020, teaching only morning classes due to the low number of students.

Holiday accrual query – 6 November 2020.

18. On 6 November 2020 at about 9.30am, the claimant had a verbal conversation with Ms MLD about the holidays she had accrued during the furlough period. Ms MLD in reply, said she did not know anything about it and confirmed that she would come back to the claimant. That same day, sometime in the

afternoon, Ms MLD in a conversation with the claimant told her that she was not entitled to any holiday as it was all included in the furlough payments and further added that the college could not afford to pay her anyway. The claimant told Ms MLD that she did not think holiday payments were included in the furlough payments and told her that she was going to check the government website.

19. On 27 November 2020, the claimant sent Mr DS an email, in which she said, " …In relation to the holidays I understand from regulations on the official Government website that employees are allowed to carry over up to four weeks paid holiday into the next 2 holiday leave years. I am certain that we would both gain considerable advantage from choosing this option…"(p135). On 1 December 2020, Mr DS replied by email, stating, " I much prefer if you could take you holidays this year in line with our usual policy. …Thus to be clear please take your holidays this year. (p137) This reply led to an exchange of further emails between the claimant and Mr DS. The outcome of this exchange was that Mr DS instructed the claimant to take leave from 19 December 2020 to 10 January 2021, which would mean her 2020 leave is used. (p138) The claimant did not agree with this, as she wanted to roll over her leave days into 2021.

20. The claimant in her witness statement states that in order to resolve this issue she decided to contact her Trade Union IWW for some further support. On 13 December 2020, an email was sent to Mr DS by Mr Tom Liebewitz, a Union Rep with TEFL Workers Union, on behalf of the claimant. A letter was attached dated 14 December 2020, in which he raised the issue of her 13 days accrued leave days for year 2020, and pointed to the Working Time (Coronavirus Amendment) Regulations 2020.(p142-146) Following this letter, on 15 December 2020, the claimant had discussions with Mr GD at which it was agreed that the claimant would be placed on furlough from 4 to 15 January 2021. This was confirmed by Mr DS by email on 22 December 2020. (p148). This meant that going into 2021, the claimant had 13 leave days carried over.

21. On 22 October 2021 the claimant attended a meeting with Mr GD. Also in attendance was a work colleague Mrs Janice Jablonka. The meeting was primarily held to deal with the claimant's contract issues but nevertheless the holiday issue was discussed. The notes of this meeting record the 13 leave days carried over from 2020. (p174) Following this meeting, Ms MLD sent a message to the claimant by WhatsApp, acknowledging the 13 days leave carried over from 2020. (p179-180)

22. The claimant, in her resignation letter, dated 25 April 2022 requested payment of this 13 days leave. (p237) In cross examination, Ms MLD said she believed the claimant had been paid for these leave days by bank transfer. She also said, she told their advisers when she was giving instructions for the preparation of the response, the balance should be paid to the claimant. This was in contradiction to her earlier response that she believed the monies had been paid into bank account. She further stated that she was not aware that the non-payment of the holiday pay was an issue. This is surprising given that both claims forms expressly include a claim for 13 days accrued holiday pay. Ms MLD was unable to direct the Tribunal to any document in the bundle to

evidence that payment has been made to the claimant for these accrued holiday days.

Contract issues

23. As of 9 November 2020, the claimant's Contract of Employment was that which was issued and signed on 1 April 2008. It was a full time contract which confirmed her annual salary at £17,000 per annum. (p118-119) The claimant's salary was increased to £27,720 per annum on 1 February 2013 as evidenced by a signed amendment document. (p121) The Contract makes reference to an Employee Handbook, which is stated to form part of the claimant's Contract of Employment. (p118) In the bundle, the respondent has disclosed two sperate Employee Handbooks. The first one at pages 347-376 – is headed Employee Handbook , with an attached label – " Property of Golders Green College" – May be borrowed for one night only then returned. The next page – Contents is headed Orchard Student Services Ltd t/a Oxford College International. There is no evidence of the date of this Handbook or when it was issued. The claimant has no recollection of this Handbook. Mrs J Jablonka, in evidence, said she was aware there was an Employee Handbook in the main office but she had not been issued with one and the first time she saw this handbook was at this hearing. The second handbook, at pages 377-422 in the name of the respondent, is stated to be issued on September 2022. The Tribunal was informed by Miss White that this handbook was disclosed by the respondent in the process of disclosure. Notwithstanding this, the fact that the handbook is stated to be issued in September 2022, this has no relevance as it post-dates the claimant's resignation. That being the case, it is unclear why this handbook has been disclosed.

24. On 9 November 2020, in the afternoon, Mr DS sent a text message to the claimant stating, *" There's a letter with George at reception with the new contract. The proposal is to commence it after the furlough scheme ends or if or when we withdraw you from it. That might not be till next April. Please collect and contact me if you have any questions or concerns when you have time. In the meantime your existing contract remains in place…* " (p129-131). The claimant collected the contract and noted there was a letter from Mr DS dated 9/11/2020 which stated as follows, *" As I detailed in my text there is a need to change your contract from full time to zero hours. However we can start this after furlough ends or after the college withdraws from the scheme. We therefore propose to continue your salary and contract as it is until the furlough scheme end or the college withdraws you from it. We realise this is a disappointment until and it is due solely to the lack of hours for you in the afternoon which is likely to continue for some time, although of course we hope things will improve. In addition as you know the teacher training duties that you formally carried out so well have dwindled. This makes your contract increasingly historical and out of touch with reality. As we cannot guarantee you the work in the afternoon as we used to be able to do we propose to offer you the contract which is the same as the other teachers have……George has a copy of your proposed contract and I would be grateful if you could collect it from George when you are able to do so He would be happy to discuss your contract with you if you so wish, as am I…"*(p181)

25. The claimant considered the new proposed contract, and noted that it was to commence on 21 April 2021 and no previous employment was to count as part of her continuous period of employment; that her salary had been

decreased to £49.00 per hour from £54.84 per hour ; and that it was a zero hours contract. The contract referred to an Employee Handbook but no reference to which one. (p123-124) In fact, as an observation from the contents and type face, the contract is identical to the claimant's previous contract except for the proposed changes.

26. On 27 November 2020 the claimant emailed Mr DS, as she put it to, open discussions in relation to the proposed changes. She highlighted that her salary was being reduced from £53.84 to £49 per hour. With regard to her working hours, she acknowledged that the Covid pandemic had an impact on the respondent business and that the respondent could only offer work in the mornings. She therefore proposed that it would be beneficial to both parties to employ her on a part time contract with a guaranteed 15 teaching hours a week at the current rate per session. She also confirmed that she felt uncomfortable with the idea that the new contract should start before the furlough scheme ends at the end of March 2021. She therefore preferred to remain on her current contract until the furlough scheme ends. She added that it is was her wish to resolve this matter expediently and amicably. (p135-136) Mr DS responded by e-mail to the claimant on 27th November 2020 to confirm that he would discuss this with Mr GD & Ms MLD.(p137)

27. At this time, the claimant and Mr DS also engaged in discussions about the claimant's annual leave entitlement.

28. The claimant was on leave from 19 December 2020 to 3 January 2021, and on furlough leave from 4 to 15 January 2021. The claimant was due to return to work on 18 January 2021, however due to a further lockdown, the claimant remained on furlough until Monday 12 April 2021.

29. In March 2021 it was announced that the furlough scheme was going to end with effect from 30th September 2021.

30. On 12 April 2021 the claimant returned to work on flexible furlough teaching morning classes only.

C's request for consultation meeting

31. On 21 September 2021 the claimant wrote to Mr DS, *"I am writing to request a consultation meeting with a union rep present to discuss my contract…"* In reply, he said, " *I'm not back yet but I would appreciate an informal chat re your concerns first as I don't know what they are. The college has no recognition agreement with any trade union as yet. I'm in college tomorrow (22 September) if you want to see me at any time that suits you…" (p51)*

32. This sparked an exchange of email correspondence between the claimant and Mr DS. In reply, the claimant wrote to Mr DS that she was requesting a consultation meeting with union representation present to discuss this new contract because she cannot agree to it until that happens and that she would like her current contract to be extended until an agreement is reached. Mr DS in response, wrote that due to the low number of students the college could only pay when it has income to do so; "it simply cannot pay you to teach no

one at all." I think it best we can discuss this between us when you are in next without a union rep as this is not a dispute between us but a discussion about your job and the jobs of everyone here; this "featherbedding" cannot alas, go on forever. He confirmed he was happy to talk with the claimant but at this stage there was no need to meet with a union official is required as the parties are not in dispute. Mr DS confirmed their meeting will be informal, so she did not have to feel she is being coerced into anything. If she decides not to meet informally, then he would proceed to a more formal meeting in due course, and again no union official is required at our internal meetings. (p152-153)

33. By email dated 23 September 2021, the claimant replied in which she acknowledged being employed and placed on furlough. She repeated her previous proposal to be employed on a part time basis with a guaranteed 15 teaching hours per week at her current rate per session. She reiterated her legal right to be informed and consulted about changes to her contract. She pointed out her request for a consultation meeting with her union rep for support and to assist her to articulate her position. (p154) Mr DS responded by email on 24 September 2021, in which he stated that a new draft (zero hours) contract to replace the old will be offered to her on Monday for her perusal to commence on 1st October and that he could not meet with her union rep. (p156)

34. By email on 24 September 2021, Mr DS wrote to the claimant stating, he has been offering meetings and that he was not refusing or not agreeing to consultations. He repeated his position that he could not see any union rep to discuss internal company matters as that is not their concern. (p158)

35. On 27 September 2021, the claimant was issued with a revised contract of employment which now showed a new start date of 1st October 2021 from which the words "and no previous employment counts as part of your continuous period of employment" were removed. (p125-126)

<u>1st Grievance – 27 September 2021</u>

36. By letter dated 27 September 2021 emailed to Mr DS at 22.59hrs, the claimant raised a formal grievance complaining of unreasonable and unlawful treatment with respect to changes to her contract; the refusal to have meaningful discussions with a union rep in support, which is her statutory right. The claimant proposed a grievance meeting date of Thursday 30 September at 1pm at which she would be accompanied by her union rep Mr Joseph McGuchan. (p159) By email dated 28 September 2021 sent at 10.37hrs, Mr DS replied stating, she was given notice of the new contract nearly a year ago and as far as he was aware she raised no concerns about it. Nevertheless he was prepared to discuss this on Thursday. As regards the grievance, he was of the view that as they had not had a chance to meet he did not class their talk as a grievance and therefore he was unable to meet with a union rep present. He considered that she should have first discussed issues with management and that it was premature to involve third parties. He still offered

to meet on Thursday but without her union rep. With regard to her contract this was rejected. (p160-161)

37. In reply by email dated 28 September 2021, the claimant reminded Mr DS that on 27 November 2020, she raised her objection to the terms of the proposed zero hours contract. Further she has repeatedly requested a consultation meeting to discuss this contract issue and have denied her request to be accompanied by a union rep. She also pointed out that by denying her the right to be accompanied by a union rep and by forcing her into the new contract which she not agree too, the respondent would be failing to fulfil its legal duties as an employer and would be breaking the law. It was still her wish to resolve matters amicably. (p161) By an email reply on 29 September 2021, Mr DS responded in a terse manner. He repeated that she had been given notice of this change of contract nearly a year ago and she chose not to talk to him or take it up with him since then. He re-confirmed that from Friday 1st October 2021 she will not be guaranteed 15 hours teaching per week although every effort would be made to ensure she received this. He added the college had no option but to put her on zero hours contract because it could not guarantee any hours to any teacher due to the poor flow of students. He repeated his position that the college has a right to meet its employees without the participation or presence of a third party being present and that he would not be bullied or coerced to meet with a union rep. He also confirmed the respondent did not recognise the right of any union to intercede in this matter at this stage before any meeting had taken place between them two.(p162)

38. The claimant did not attend the meeting on 30 September 2021 at 1.00pm, as arranged by Mr DS. The claimant by email sent the same night at 21.31hrs explained her absence in the following terms, *" Regrettably, I could not attend the meeting at 1:00 pm today as you have rejected my statutory rights to accompaniment."* She also stated, *"I would like to bring it to your attention that from tomorrow 1st October 2021 I will be working under protest*." (p166)

39. On the same day, (i.e 30/09/21)the claimant's union sent a letter to DS, in which it rehearsed the issues the claimant had raised in the past months. (p163-165) In an email exchange with the claimant, Mr DS denies receipt of this letter. The Tribunal has not been provided with any evidence of posting or if it was sent by email, a copy of this. In the absence of a reply by Mr DS, it is possible that this letter was not received by Mr DS. In fact by email dated 5 October 2021, Mr DS confirms that neither he or Mr GD has received this letter. (p166)

40. In his email to the claimant sent on 5 October 2021, Mr DS wrote, *" Under protest or not we note that you are continuing to work at the college. You having refused to meet me at all means that I have nothing to add to what I wrote previously to you (or any third party). I also regretfully protest at your behaviour but I am pleased you are working normally. …… We are happy you are still working with us however even in these trying times."* (p166) In reply, the claimant re-confirmed her position that she was working under protest which started on 1st October also for Mr DS's convenience she sent a further copy of

her union letter sent on 30th September 2021.(p167-168)

41. In her witness statement, the claimant confirms that even at this time she remained hopeful that she and Mr DS could sit down and resolve the issue with the help of the union rep. She refused to meet with Mr DS alone as he found him to be very intimidating character. In her experience he did not listen to what she had to say so she knew that he would simply try to convince her to agree to what he wanted. She found him to be manipulative and offensive; and also found his emails and messages unprofessional and threatening. At this point their working relationship was becoming worse and she felt he showed no real effort to remedy the situation.

Meeting with GD – 22 October 2021

42. On 22 October 2021, the claimant met with Mr GD. She was accompanied by her colleague Mrs J Jablonka. The purpose of the meeting was to discuss her holiday pay issue. However, after discussing the holiday issue Mr GD wanted to talk about the contract issue, which the claimant was not prepared to discuss in the absence of her union rep. The typed note of this meeting records, the claimant expressed her grievances regarding the proposed contract, and that Mr GD said he would address her grievances with Mr DS. (p174)

43. On 5 November 2021, the claimant was given a further contract which was identical to the last one except that this now stipulated her holiday pay entitlement as 14 working days; it also included wording stating that this contract does not mitigate any previous years of employment at Golders Green College. The salary rate was correctly amended to £53.84 per session. (p127-128) On receiving this contract, the claimant emailed DS on 12 November 2021 stating, *" Regrettably I cannot agree to the terms and conditions set out in the contract as these are insufficient. If you want to renegotiate my contract we should do so in a meeting with union representation present. I will not accept a contract that has not been through the lawful negotiation process I would like to draw your attention to the fact that I am still working under protest. I look forward to real reply."* (p176) In reply, Mr DS asked the claimant to let him or Mr GD know verbally or by e-mail what in her view is insufficient. He also confirmed that he did not wish to involve a third party in their discussions that included another member of staff. He confirmed the claimant was under no pressure to sign the contract and that they were working on the basis of 15 hours per week which she was happy to work although under protest. (p175-176)

44. On 5 January 2022, Mr GD wrote to the claimant by e-mail stating, *" Regarding your working under protest you are welcome to discuss their grievances with me or David anytime."* By e-mail of 14th January 2022 the claimant replied stating " *I'm happy to discuss my grievances but only with union representation I'd like to bring it to your attention that I'm still working under protest."* (p183)

First Tribunal claim – 25 December 2021

45. On 25 December 2021, the claimant with representation from her union, presented a claim for redundancy payment; unpaid holiday pay and unlawful deductions from pay. The claim was issued against Mr DS as the employer. The claim was accepted and notice of this claim was sent to Mr DS by letter dated 31 January 2022. The response was to be filed by 28 February 2022. On 21 February 2022 Mr DS filed a response, contending that he was not the employer, and the claims be struck out or dismissed.

46. By email sent on 4 February 2022 at 7.56pm, to the claimant by Mr DS, he wrote, *" This is wrongly sent. You don't work for David Simons. You work for Golders Green College and School of English Ltd. (see your contract)"*. (p42). On 15 February 2022 by email dated 10.42am sent to the claimant, Mr DS wrote, *"Further to my last e-mail and WhatsApp to you I am still waiting to hear from you that you have withdrawn your claim against me personally at the tribunal. I'd be grateful if you would do this immediately as I am not your employer. Although I have written to the tribunal they will need your confirmation. I would point out that your harassment of me in this way is un acceptable behaviour. Should you refuse to withdraw the claim personally against me I will consider this to be unacceptable as you have no right to sue me for thousands of pounds when I am not your employer. I'm sure you realise how stressful this is and would not wish to inflict that on me. Any legal costs I have to bear in this case from now on if you fail to respond will be your responsibility. An apology also would be a good way to show your acceptance of your mistake. Many thanks*."(p43)

47. On 18 February 2022, Mr DS and the claimant had an exchange of messages. The claimant confirmed she had received no messages on WhatsApp from Mr DS between 6 November 2020 and 15 February 2022. Further, her understanding was that any objection to the case should be included in the grounds of resistance sent to the employment tribunal. In reply Mr DS, repeated that he was not her employer, and as she had ignored his several reasonable requests to withdraw the claim against him personally, this gave him no option but to engage a solicitor to act for me him, and that she would now be responsible for those costs, which could have been easily avoided. (p44)

48. On 21 February 2021, the solicitors instructed by Mr DS wrote to the claimant and her union rep by email confirming a response had been filed, and that because the claimant has not withdrawn her claim he has had to seek legal assistance at a cost of £675.50 (inc of Vat), and these costs will increase unless the claim is withdrawn. On the same date, a formal letter was emailed to both the claimant and her union in similar terms and advising the claimant to seek legal advice as well as withdrawn the claim and re-issue against the correct employer. (p50-51) It does not appear that either the claimant or the union rep replied to the solicitors letter. If they did, there is no correspondence in the bundle, which the Tribunal was referred to.

49. By letter dated 24 February 2022, the claimant's union rep wrote to Mr DS in reply, stating that the claimant was not under any obligation to pay any of his legal fees, and his claim was without any legal basis. (p192)

50. On 25 February 2022, at 11.17hrs Mr DS emailed the claimant, the subject matter being Notice of Legal Action. In his email, he stated, *" I have received no reply that you are prepared to pay my legal costs for the tribunal response I had to make which was wrongfully applied to me. Accordingly if you refuse to settle the legal costs of £675 I will have no option but to apply to the County Court for judgement against you. This would incur further costs which will be your responsibility. I have given you ample opportunity since February 4 to settle this matter without costs but you have resolutely ignored my reason requests. You have until Monday 28th February to respond." (p187)*

51. Mr DS replied to the union letter the same afternoon at 15.09hrs, maintaining that the union has had ample opportunity to put this right and requested that his legal costs are settled. Earlier by email sent at 13.47hrs to the claimant repeated his demand for payment of his legal costs by 28 February 2022. He further stated that his action was not to harass or bully her but purely as a result of her action in wrongly pursuing him personally.(p194)

52. By email dated 25 February 2022 sent at 14.47hrs to the Tribunal, the union rep requested that the named respondent (Mr DS) be changed to Golders Green College and School of English Ltd, and that a genuine mistake had been made and there was no intention to mislead the Tribunal. They apologised for the distress and confusion caused. It does not appear that this e-mail was copied to Mr DS. (p193)

53. By letter dated 25 March 2022, the Tribunal wrote to the claimant's union rep concerning the correct identity of the employer, and that it should be amended to the name of respondent. A reply was required by 1 April 2022. (p38) The union rep replied in a detailed letter dated 29 April 2022, in which it explained that an honest mistake had been made in writing the name of Mr DS as the respondent. This can be evidenced by the fact that the respondent is included correctly in the Early Conciliation Certificate and Grounds of Claim.

Events of 27-28 February 2022

54. On or about the weekend of 26 February 2022, Mr DS and/or Ms MLD discovered that a GoFundMe page was open for the benefit of the claimant. On 27 February 2022, Mr DS sent an email to the union rep, copied to the claimant, inviting him to delete the GoFundMe page. He also required an undertaking not to post defamatory statements about the respondent. (p200)

55. By email sent on 26 February 2022 sent at 03.04hrs, Mr DS wrote to the claimant. The subject was "contract". The email read, "*apologies for sending this at*

the weekend. Reviewing the mail trail however I note that I did not read or reply to your important e-mail of 27th November 2020 in which you detail your issues as well as your agreement in principle to the zero hours contract offered. Because I did not see this e-mail I understood that you had not shown any objections to the contract, and I think this may have been one source of our misunderstanding. Sadly I missed this e-mail and you did not remind me of it and I think from this may stem your frustrations and the increasingly bitter and protracted issues and concerns that you feel may not have been properly addressed because your e-mail in which in principle you agree to the zero hours contract (subject to discussion and detail) was not read by me or replied to, unfortunately. It is easy to lose track of emails in the thicket of emails one receives but I'm very sorry this e-mail did not receive the attention it deserved. I would like therefore for us to take a step back go through this e-mail with you if you are still so minded to do so. This offer of contract talks is conditional upon a satisfactory outcome of queries into the highly damaging social media issue for which I have already made you aware. This we can discuss first. You have however been with us a very long time and are a valued member of staff. If you appear to be on Monday after your class to discuss both these terms with another senior staff member there (George or MLD (but not a colleague) we may perhaps be able to do something to alleviate what is proving to be a very difficult and stressful situation. However, this meeting would not include the representative from the Union with which you have been consulting. Please let me know if you are willing to meet me. Many thanks (204-205) The claimant replied to this email on 28 February 202 at 8.30am confirming that she would not be able to meet on 28 February. Further she attached a letter from her Union in which it was confirmed that the claimant would not be attending the meeting on 28 February; that Mr DS deals with her grievance raised on 27 September 2021; that all correspondence be kept within working hours; and that due to the bullying behaviour the claimant suffered over the weekend she did not feel secure going into any meeting without union representation. (p206-207)

28 February 2022

56. On 28 February 2022 the claimant arrived at work at her usual time. Earlier at 8.30am she had emailed Mr DS confirming that she would not be attending the meeting he had scheduled. The claimant entered the building via the back entrance with her colleague, Nora Al Saadoon. (NAL) They were met by Mr DS, in the reception area, who told the claimant she was not allowed to teach her class until she attended the meeting with him. Mr GD was also standing in the reception area. The claimant informed Mr DS & Mr GD that she did not feel comfortable and asked if she could be accompanied by NAL. Her request was refused. The claimant asked for time to think about it. At around 9:30 am Ms MLD entered the terrace followed by Mr GD. Ms MLD had an iPad in her hand. Mr GD informed that claimant that Mr DS had agreed not to be present at the meeting, and warned her that if she did not agree to have their meeting then a formal meeting will be arranged. Then, Mr DS entered the terrace, and all three of them surrounded the claimant and began to ask her questions about the GoFundMe page. In evidence, Ms MLD admitted having the iPad in her hand showing the front page of the GoFundMe page, which was to show to the claimant. Ms MLD denied waiving the iPad in the claimant's face. The claimant told them that she knew nothing about it (i.e GoFundMe page) and should speak to her union rep.

57. During this exchange, the claimant recalls, which is confirmed by NAL, taking a call from her union rep, and told him that she was being intimidated by them and that she was being refused entry to the college. The claimant tried to enter the building with NAL. She was refused entry by Mr DS & Mr GD, but NAL was allowed in. NAL remained in the area and observed what was happening. She confirmed in evidence that Mr GD said, “it is our building” and stood in the doorway to prevent the claimant entering. At this point the claimant became distressed and tearful, as she felt intimidated and threatened. Ms MLD accepted in evidence that the claimant was upset at this point. In her state of mind, the claimant told them that they had gone “too far”, and left the building.

58. On 1 March 2002 the claimant went to her doctors and was signed off absent from work from 28th February 2022 to 1st April 2022 for work related stress. (p211) She presented a further Fit Note on 1 April 2022 to 30 April 2022. (p235)

59. During this period from 28 February 2022 to the date of the claimant’s resignation, there was an exchange of correspondence between the claimant’s Union Rep and DS. This correspondence raised the conduct of the respondent and DS, in particular.

60. By letter dated 14 March 2022, the claimant raised a formal grievance regarding the incident of 28 February 2022. (p220-221) In that letter the claimant stated she was subjected to unreasonable and unlawful treatment and complained about her treatment and behaviour towards her in the preceding days. She expressed that the whole incident gave rise to a sense of breach of trust between them. However she was willing to return to work provided a resolution to the issues was reached and if she has full confidence that she would be treated with dignity and her rights as an employee are respected.

61. In addition, the claimant referred to the respondent’s grievance procedure, which provides an employee has the right to be accompanied at any stage of the procedure by a fellow employee or a trade union official who may act as a witness or seek to speak on your behalf to explain the situation more clearly. (Page 24 clause 2). She requested a meeting online on zoom and made it clear that she would be exercising her right to be accompanied by her union rep, (Mr Joseph McGuchan) (p220-221)

62. On 14 March 2022 at 18.29 Mr DS sent to the claimant, a reply by email, acknowledging receipt of the letter. He made it clear that before any grievance meeting was held they first needed to speak about the GoFundMe page, and because of issues about the page and this was now a police enquiry which involved Mr J McGuchan, he could not be present any at future meeting. (p222).

63. On 15 March 2022, in reply, the claimant sent an email to Mr DS, repeating her position for a grievance meeting as requested. Following further email exchange Mr DS’s view was not to proceed with any meeting or discussion given that the claimant was on sick leave, and by continuing to do so may have

a detrimental effect on her health.

64. On 25 April 2022, by letter, the claimant confirmed her resignation giving 1 weeks' notice, with the last working day to be 3 May 2022. She considered she had been constructively dismissed due to the repudiatory breach of contract by the respondent. She expressly referred to the failure and/or rejection of her two grievances of 21 September 2021 and 14 March 2022; and the behaviour and conduct by Mr DS and senior staff (Ms MLD & Mr GD) directed towards her on the 28 February 2022. (p237-238) In addition, the claimant set out her outstanding money claims, which included 13 days unpaid annual leave.

65. By email sent on 25 April at 14.44hrs, Mr DS acknowledged the resignation letter. He insisted she attends a meeting to discuss " the important matter that you have refused so far to talk to us about since Feb 28". He confirmed she could have a "non-contributory third party present except Mr McGuchan". (p239) The claimant did not respond to this letter but her union rep, made it clear that the claimant would not be attending work during her notice period.

66. For the purposes of this case, it is irrelevant what happened after 3 May 2022. Accordingly, this judgment does not make any further findings.

The legal framework

67. In its deliberations, the Tribunal gave consideration to the legal framework and relevant case law as set out below;

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

69. For the claimant to establish her claim of unfair dismissal she must show that she had been dismissed. Dismissal for these purposes is defined in section 95 ERA 1996 and includes in sub-section 95(1)(c) *'the employee terminates the contract under which he/she is employed (with or without notice) in circumstances in which he/she is entitled to terminate it without notice by reason of the employer's conduct'.*

70. ***Western Excavating (ECC) Ltd and Sharpe 1978 IRLR 27*** established that in order for the circumstances to entitle the employee to terminate the contract without notice, there must be a breach of contract by the employer, secondly that breach must be sufficiently important to justify the employee resigning; the employee must leave in response to the breach not some unconnected reason; and that that employee must not delay such as to affirm the contract. The breach relied upon can be a breach of an express or implied term.

71. In ***Mahmood v BCCI 1997 ICR 607*** it was confirmed that every contract of employment contains an implied term that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer

and the employee. It is implicit in the case of ***Mahmood v BCCI*** that any breach of the implied term will be sufficiently important to entitle the employee to treat himself as dismissed and the reason for that, it is necessary do serious damage to the employment relationship. That position was expressly confirmed in ***Morrow v Safeway Stores Ltd 2002 IRLR 9*****.**

72. Where the breach alleged arises from a number of incidents culminating in a final event, the tribunal may, indeed must, look at the entire conduct of the employer and the final act relied on which need not itself be repudiatory or it even unreasonable, but must contribute something even if relatively insignificant to the breach of contract. ***Lewis and Motor World Garages Ltd*** **1985 IRLR 465** and ***Omilaju v Waltham Forest London Borough Council 2005 IRLR 35***.

73 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 series' in a precise or technical sense. The act does not have to be of the same character as the earlier acts. It's 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 incident 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 contrastive 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.'

74. The test to be applied in assessing the gravity of any conduct is an objective one and neither depends upon the subjective reaction of the particular employee nor the opinion of the employer as to whether its conduct is reasonable or not. ***Omilaju v Waltham Forest London Borough Council*** and ***Bournemouth University Higher Education Corpn v Buckland [2011] QB 323***.

75. Once there is a breach of contract that breach cannot be cured by subsequent conduct by the employer but an employee who delays after a breach of contract may, depending on the facts, affirm the contract and lose the right to treat him/herself as dismissed. ***Bournemouth University Higher Education Corpn v Buckland [2011] QB 323***.

76. If an individual delays too long in resigning, they will have affirmed the contract and waived the breach. In ***WE Cox Toner v Crook (1981) IRLR 443***, a delay of seven months fatally undermined a constructive dismissal claim.

77. The proper approach, in the main distilled from the cases has been set out by the Court of Appeal in ***Kaur v Leeds Teaching Hospitals NHS Trust*** **[2018] EWCA Civ** 978 per Underhill LJ at paragraph 55.

> *'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?*

78. In ***Hogg v Dover College 1990 ICR 39*** the EAT had to consider the legal implications of an employer who seeks to fundamentally alter the terms of a contract of employment to the detriment of an employee without formally dismissing the employee at all. The EAT held that the mere fact that an employment relationship continues did not preclude a finding that an earlier constructive dismissal had taken place.

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

80. 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.

Submissions

81. The Tribunal considered the submissions of both parties, which are summarised below.

Claimant's submissions

82. The claimant's case is that the breaches relied upon are singularly and/or collectively sufficient to find a fundamental breach of contract entitling her to resign. The claimant identified the incident of 28 February 2022 and the behaviour/conduct of the Mr DS, Mr GD & Ms MLD as the last straw. In relation to the holiday pay and unlawful deductions of wages, the evidence is undisputed that these monies are owed.

Respondent's submissions

83. The respondent's submission as made by Mr Williams, was simply, " the claimant's claims have no merit and should be dismissed. " No representations were made about affirmation or that the claimant resigned for an unconnected reason, or that she was dismissed for a potentially fair reason.

Discussion and decision

84. The Tribunal gave consideration to each of the issues to be determined as set out in the agreed List of Issues. Accordingly, these are addressed below.

Unpaid 13 days holiday pay

85. The Tribunal finds that at that date of resignation, the claimant was owed 13 days holiday pay, which the claimant states amounts to £1,399.84. The reasons are;

(i) It has been accepted by the respondent that the claimant was allowed to carry over 13 leave days from her 2020 entitlement to her holiday year 2021/2022.

(ii) The respondent provided no evidence to show the claimant has been paid for this holiday leave. The oral evidence from Ms MLD was that she believed she had been paid by bank transfer. She said, that when she was working with the respondent's advisers in preparing the response, she told them that the claimant should be paid for this holiday entitlement. Surprisingly, she said, she was not aware that a claim for holiday pay was an issue, notwithstanding this claim has been made in both of the Claims Forms.

(i) It is trite law that an employee, upon termination, is entitled to be paid any accrued holiday pay. That is a statutory right. In the absence of any proof of payment, the claimant is entitled to be paid for these 13 days.

86. The claimant does not argue that non-payment of the monies amounted to a repudiatory breach, which entitled her to resign. The Tribunal does not find that during her employment she pursued this issue as a breach. In the resignation letter, the claimant asserts her legal entitlement to be paid for this outstanding leave, as part of her termination payment.
payment.

Constructive dismissal

87. The Tribunal reminded itself that the test to be applied is one of objectivity. It therefore needed to consider matters not through the eyes of the claimant, but through an objective person approach. It is noted that the burden of proof rests on the claimant to establish that she has been constructively dismissed, and that is not an easy burden to satisfy. The Tribunal is looking for a repudiatory breach of contract. The breach must be fundamental.

88. The first question to be considered is whether there has been a significant breach of contract. In this case, the claimant is arguing that either individually or cumulatively the alleged breaches are such that they have breached either the implied term of trust and confidence or an implied term in relation to a duty of care owed to her to provide a safe place of work. It is only if, it is found that there has been a fundamental breach of contract then it will be necessary to question whether the breach in question was causative of the decision to resign and/or there was affirmation of the breach.

(a) An unlawful change of contract without consultation

89. On the facts, this is a clear fundamental breach which breached the implied terms of trust and confidence. The respondent unilaterally and without any consultation or meaningful discussion imposed a change to the claimant's contractual terms effective on 1 October 2021. In correspondence, the claimant repeatedly opposed this unilateral change and sought meaningful consultation, which Mr DS refused to discuss except on his terms. The imposed changes are significant. The changes being, a zero hour contract with no guarantee of teaching hours, which detrimentally impacted on the earnings of the claimant. Notwithstanding the predicament faced by the respondent, namely to re-organise because of the low number of students requiring teaching, The Tribunal finds the respondent did not have reasonable cause to act in the way it did to impose the new contract. Mr DS should have agreed to the claimant's request for a consultation process and/or her alternative proposal to change her terms of employment. Mr DS refused to engage with the claimant, except on his terms. Mr DS had ample time and sufficient opportunity to engage with the claimant by did not do so. If applying the principles in ***Hogg v Dover College (1990) ICR 39***, the claimant was constructively dismissed as from 1 October 2021, being the date the new contract terms, unilaterally imposed, became effective.

90. This breach was a reason for the claimant's resignation. The claimant did not affirm this breach or delayed in resigning. By email dated 22 September 2021 the claimant made it abundantly clear that the new contract terms were not agreed (p152) and in subsequent correspondence starting

from 30 September 2021 that she was continuing to work under protest (p166). By working under protest the claimant reserved her legal rights. In evidence, the claimant re-confirmed that she continued to work on the new contract not because she agreed to the new terms but because she needed earn a living. That is a reasonable and justifiable explanation and does not mean or infer she agreed to the new contract terms.

(b) Refusal of grievance complaint meeting for grievance raised on 21 September 2021.

91. The Tribunal finds this refusal amounted to a breach of an express term which also breached the implied term of trust and confidence. According to the terms of the claimant's contract of employment she had the contractual right to raise a formal grievance. The Employee Handbook (version 1) which formed part of the claimant's employment, states in respect of the Grievance Procedure, " an employee has the right to be accompanied at any stage of the procedure by a fellow employee or a trade union official who may act as a witness or speak on behalf of the employee …" (p373) Despite repeated requests made by the claimant, Mr DS refused to deal with the grievance in breach of the respondent's own Policy. This refusal was further compounded by the failure and/or refusal to deal with the second grievance raised after the events of 28 February 2022. This repeated refusal and/or failure to deal with the grievance was calculated to destroy the implied term of trust and confidence.

(c) Threatening e-mails sent to C attacking her character

92. Overall the tone of Mr DS's emails particularly in relation the revised contract terms; in response to the claimant's requests to deal with her grievances, and right to be accompanied by her union rep, and the demands for payment of his legal costs, was unreasonable and unacceptable. Such conduct was calculated to damage or destroy the implied term of trust and confidence. Alternatively, it certainly did have that effect.

(d) Legal fees

93. It was reasonable for Mr DS to write to the claimant to withdraw him as a party to the first claim. It was negligent of the claimant and/or her union rep acting on her behalf, to issue the first claim against Mr DS personally. The claimant had been employed by the respondent since April 2008 and her contract of employment signed on 1 April 2008, clearly confirmed the name of the employer. (p118) She did know the identity of her employer. The Tribunal does not accept the explanation given by the union rep in the letter to the Tribunal dated 29 April 2022 as an "honest mistake". (p53-58) If that was the case, the claimant should have withdrawn Mr DS from the claim, when first raised by him when he submitted the first ET3 response on 7 February 2022. This would have avoided DS incurring legal costs, Then to wait until the deadline date imposed by the Tribunal identifies issues with Mr DS and the union rep. Frankly, Mr DS should not have been put to the expense and inconvenience to instruct his own solicitors. The Tribunal acknowledged the frustration felt by Mr DS in his attempts to seek re-

compense to recover his legal fees incurred.

94. Notwithstanding this, the Tribunal finds the terms and tone of Mr DS correspondence, particularly with the union rep, terse and unnecessary. Writing to the claimant as well as her union rep, and making the threats of legal action was unnecessary and unacceptable. Mr DS's persistence in seeking costs in the manner he did, had the effect of destroying or damaging the implied term of trust of confidence. Hence his conduct amounted to a fundamental breach.

95. The Tribunal is not satisfied that the claimant resigned in consequence to this conduct alone. If she did do so, then she has delayed in resigning.

(e) Events of 28 February 2022- Claimant made to feel physically intimidated and threatened outside of her workplace.

96. On this incident, the Tribunal finds the claimant's account, which has been corroborated by NAL to be credible and honest . The claimant has not exaggerated the events of that morning. In contrast, both Mr GD and MLD, in cross examination were evasive and unconvincing. The played down the incident. Both of their accounts in their witness statement was remarkably brief, despite knowing this was a serious incident which the claimant complained about. The Tribunal found the conduct of Mr DS, Mr GD and miss MLD amounts to a serious repudiatory breach, which without any doubt, was calculated to destroy and damage the implied term of trust and confidence. The issues which Mr DS, Mr GD & Ms MLD wanted to address (i.e the Go FundMe page) should have been addressed in a more amicable and structured manner rather than ambushing the claimant as they did and insisted on discussing the matter without giving her prior notice. The conduct of Mr DS, Mr GD and Ms MLD was unacceptable and lacked any respect for the claimant as a valued employee, her state of mind and welfare. That is not the behaviour and conduct of a reasonable employer. The claimant's letter of grievance (i.e second grievance) sent after the incident on the same day, clearly confirmed her disgust and criticism at their conduct and treatment she was subjected too. It is clear the claimant resigned in consequence to this incident/breach. The claimant did not affirm this repudiatory breach, and did not delay in resigning.

(f) Repeated refusal in respect of the Claimant's right to be accompanied at grievance meetings leading to two unresolved grievance complaints.

97. The Tribunals finds this to be a serious repudiatory breach which was calculated to damage or destroy the implied term of trust and confidence. The respondent, in particular Mr DS, did not have reasonable cause to refuse the claimant's right to be accompanied by her union rep. It is a statutory right for an employee to be accompanied at a grievance meeting. That does mean the right to be accompanied by a union rep. It is immaterial if the respondent does not have a trade union agreement or does not recognise the trade union representing an employee, a reason given by Mr DS. He was mistaken in his view.

98. Mr DS's refusal to allow the claimant to be accompanied by her union rep, was a flagrant breach and disregard for its own contractual procedures. (i.e Grievance Policy) This is no justification for such breach. This was another reason for the claimant's resignation. She did not affirm this breach or delay in resigning.

(g) The effect on the Claimant's health.

99. This issue was withdrawn by Miss White in submissions.

(h) Lack of acknowledgement of wrongdoing, leaving the Claimant with no confidence that events would not be repeated.

100. Given the conduct and behaviour of Mr DS, Mr GD and Miss MLD it was not unreasonable for the claimant to seek an apology and the assurances she requested in her second grievance letter. The respondent's failure to recognise their wrongdoing and unreasonable conduct is a further testament of their unwillingness to accept blame, and understand their conduct and/or breaches. Given the treatment suffered by the claimant, it was not unreasonable for her to seek the assurances she did, by which time the working relationship had been completely destroyed by the respondent's conduct. The Tribunal finds the respondent's conduct amounted to a serious repudiatory breach which entitled the claimant to resign, and that she did not delay in resigning.

The last straw

101. In the alternative, the claimant has argued that the "last straw" was the incident of 28 February 2022. At law, the last act, need not be a breach of contract in itself but must be capable of contributing something to the cumulative breach. The Tribunal has already found that the incident of 28 February 2022 amounted to a repudiatory breach on its own. In any event, this breach is sufficient to contribute to the cumulative breaches as identified in this judgment above.

102. In conclusion, the Tribunal has found that the respondent's conduct, either individually and cumulatively, was a serous repudiatory breach of contract which destroyed the implied term of trust and confidence and was undoubtedly the effective cause and reason for the claimant's resignation.

103. The Tribunal considered the respondent's assertion, as pleaded in the response to the claim, that the dismissal was fair on the grounds of conduct, and that any compensation should be subject to reduction for her blameworthy and contributory fault. No evidence was lead on this point and neither was any allegation of misconduct put to the claimant in cross examination. The fact is the respondent has pursued this case in evidence at all. Accordingly, there was no evidence before the Tribunal to make any finding of conduct and/or blameworthy and contributory fault.

Unlawful deductions 1.10.2021 – 3 May 2022.

104. The claimant did not agree the terms of the new contract. She was working under protest. It was incumbent on the respondent to ensure it reached an agreement with the claimant before 1 October 2021 or soon thereafter. It did not do so. Until an agreement was reached the claimant was entitled to be paid at her current (i.e previous) salary. Accordingly, the respondent is in breach of contract. The claimant is entitled to recover the unpayment in full.

105. For the reasons given as set out above, the claimant succeeds in her claims, and is therefore entitled to a remedy.

Remedy

106. The parties reached an agreement on remedy and requested the agreed compensation sum be recorded in this Judgment. Accordingly the respondent agreed to pay the claimant the sum of £39,208.47. The breakdown of this sum is as follows;

(i) Basic award - £8,614.40
(ii) Compensation
Immediate losses – £13,574.64
Future losses - £5115.76

(iii) Pension loss – £1,585.38
(iv) Loss of Statutory Rights – £1076.80
(v) Acas uplift - £4270.52
(vi) Holiday pay - £1399.84
(vii) Unpaid wages - £3571.13

Application for Costs

107. The claimant's Counsel made an application for costs of this case, which has been resisted by the respondent. The Tribunal has reserved its decision, which the parties will be notified in due course.

Employment Judge Bansal
Date 22 December 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

3/1/2024

N Gotecha
FOR THE TRIBUNAL OFFICE