



## EMPLOYMENT TRIBUNALS

Claimant: Ms K Beasley  
Respondent: UKTV Media Ltd

Heard at: London Central (by CVP)

On: 14,15 and 16 October 2024  
Before: Employment Judge Mr J S Burns

### Representation

Claimant: Mr J Neaman (Counsel)  
Respondent: Ms C D'Sousa (Counsel)

### JUDGMENT

1. The claim for wages (enhanced sick pay) is dismissed on withdrawal by the Claimant.
2. The claim for unfair constructive dismissal is dismissed.
3. The claim for contractual holiday pay succeeds. The Respondent must pay the Claimant five days' pay net of NI and tax deductions by 30/10/24.

### REASONS

1. These were claims of constructive unfair dismissal, and for holiday pay. A breach of contract claim for enhanced sick pay was withdrawn.
2. I heard evidence from the Claimant and then from the Respondent's witnesses Sarah Goldman (Line Manager), Steve North (Chief Programming Officer and Global Director of Content Compliance) Della Hiron (HR Business Partner) and Andrea Amey (Chief Digital Officer and member of the Executive Leadership Team). The documents were in a bundle of 364 pages. I watched an extract from a film called "Sister Boniface" which had been shown to various Respondent employees on 7/12/23. I was sent an agreed list of issues and an email with some holiday pay calculations. I received written and oral final submissions.

#### The Claimant's credibility

3. All concerned in this case have acknowledged that the Claimant's father's suicide and the manner of that suicide (which circumstances have been described appropriately as "harrowing"), caused the Claimant lasting and extreme upset. It is likely that this negatively affected her memory and contributed to a lack of objectivity on her part in recalling events.

Having made due allowance for these factors, I find nevertheless that the Claimant lacked credibility as a witness. Her lawyers' correspondence before action, her particulars of claim and her witness statement, all contain passages which are selective in their presentation of the material facts and which put forward a slanted, exaggerated, misleading and at times plainly false version of events, which were then abandoned by the Claimant in her oral evidence under cross-examination. There was also a material failure by the Claimant to refer in her pleadings to certain highly material text messages between herself and Mrs Goldman, followed by a failure to disclose the messages or refer to them in her witness statement. She failed to provide any satisfactory explanation for these failures and discrepancies, instead suggesting that there had been some slip-up by her lawyers or simply that she "could not recall" or "did not know".

4. In contrast, I found Mrs Goldman to be a careful and reliable witness who did her best to give accurate and complete evidence to the Tribunal, even if it was against her own interest at times.
5. The main disputes of fact, such as they are in this case, are to be found between the Claimant's and Mrs Goldman's respective versions of certain events.
6. Where the Claimant's evidence differed from that of Mrs Goldman, I preferred the latter.

#### Findings of fact

7. The Claimant worked as Head of Digital Advertising for the Respondent from 16/6/2014.
8. On 5/6 June 2023 the Claimant's father committed suicide by self-immolation.
9. The Claimant informed her line manager Mrs Goldman who on 6/6/23 sent a WhatsApp message to the Claimant to say she should take whatever time off that she needed and that her diary had been cleared. The Claimant started a period of bereavement leave.
10. There was a dispute as to whether or not at this point the Claimant asked Ms Goldman to tell HR that her father's death had been by suicide. The Claimant stated in her POC and her witness statement that she specifically asked Ms Goldman to tell HR "*about the circumstances*", by which term she intended to refer to the cause of the death.
11. Under cross-examination the Claimant did not suggest that she had told Mrs Goldman in terms and specifically that she wanted Ms Goldman to tell HR that the Claimant's father

had died by suicide or by self-immolation. She said that she had asked Mrs Goldman to pass on "*the circumstances*".

12. Mrs Goldman was unable to recall the exact words used by the Claimant at that time but stated in her witness statement "*my recollection of our conversation during that call is that the Claimant did not want me to tell anyone (including HR) that her father had taken his own life.*"
13. There was no reason for Mrs Goldman, (who I find was a kind, but also a conscientious, and methodical manager), not to have told HR about the suicide if that is what the Claimant had clearly asked her to do. As Mrs Goldman was in touch with HR at this time about the the Claimant's situation, if the Claimant had asked for the information about the suicide to be passed on, Mrs Goldman would have done it.
14. Even on the Claimant's evidence, there was no such specific and clear request, as the Claimant's reference to "circumstances" would have been ambiguous and open to misinterpretation (for example that it could have been a reference to the death rather than the cause/manner of it).
15. I prefer Ms Goldman's evidence about this and find that the Claimant did not specifically or by implication ask Ms Goldman to tell anyone about the suicide and that it was objectively reasonable for her to understand from what the Claimant said at the time that she wanted Mrs Goldman to tell HR about the death but not its cause.
16. It was suggested, in final submissions by the Respondent's Counsel, that there may have been a simple misunderstanding about this between the protagonists. I find it is more likely that Mrs Goldman correctly understood the Claimant's intentions and communications at the time which were that the Claimant did not want the suicide and its manner to be passed on to HR.
17. As a consequence, while Mrs Goldman did tell HR in June 23 and her own manager that the Claimant's father had died, she did not pass on the detail about the suicide and the other managers and HR was unaware of the suicide until receipt of the Claimant's resignation message in January 24.

18. Shortly after 6/6/23 Mrs Goldman spoke to one of the Claimant's closest friends at work from which it was apparent that the Claimant had told her friend about her father's death but not its cause.
19. On 6/6/23 the Respondent's HR sent to Mrs Goldman a link to a policy document which contained details of the Respondent's "Life Leave" which included provision for bereavement leave for staff. Ms Goldman did not pass it on to the Claimant at the time because she had already told the Claimant to take whatever time off she wanted and that her diary would be cleared, and Mrs Goldman did not want to trouble the Claimant with a work policy at a sensitive time. In any event the Claimant was aware of the document and herself looked it up and read it on 7/6/23.
20. On 7/6/23 Mrs Goldman sent the Claimant a WhatsApp message saying she had been thinking of the Claimant a lot and she *"hoped that the Claimant was ok"*.
21. Mrs Goldman was due to take holiday from 9<sup>th</sup> to 26 June 23. On 8 June 2023, she sent a WhatsApp message to the Claimant providing Mr Tewungwa's (Mrs Goldman's manager's) mobile number and advising the Claimant that Mr Tewungwa wanted the Claimant to have his number in case the Claimant needed anything whilst Ms Goldman was away. Mrs Goldman also added again that she was *"thinking of the Claimant"* and reiterated that *"if the Claimant wanted to work that was fine but if she did not that was fine too and there was nothing that couldn't wait - as another colleague in the team was due to return the following week"*.
22. The Claimant took leave until 12 June 23 when she started working again (from home). None of the leave she had taken following her bereavement was counted against her annual leave.
23. On 14 June 2023, and despite being in the USA on annual leave, Mrs Goldman sent a WhatsApp message to the Claimant to check in and *"see if she was ok"* and offered to have a call with the Claimant if helpful. The Claimant declined the offer of a call, and also added that *"work helps"*
24. She received an email from Mr Tewungwa on 21 June 23 stating *"I was so sorry to hear the news. Just wanted to see whether you were OK (as one can be). Please do let us know if there is anything more we can do to help support you..."* The Claimant did not reply to this.

25. On Mrs Goldman's return to work on 26/6/23 she had a Zoom meeting with the Claimant, in which they discussed how the Claimant was feeling and it was arranged that the Claimant would take 3 days of "life leave" to cover the 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> of June 2023 and the week commencing 10 July 2023 as the funeral was due to take place that week.
26. On 27 June 2023, Mrs Goldman sent an email to HR to confirm the details of her "catch-up" with the Claimant and the dates that Claimant wished to take as "life leave." Mrs Goldman also informed HR that the Claimant was *"not yet ready to return to in person working, as she feels that people, whilst well-meaning, will want to hug and touch her, and will ask her about what happened. She does not want to talk about it, as she finds it overwhelming. She is keen to work remotely, and naturally we have the means for her to do so, with no impact on the business. I want to work at her pace, so I have told her she can take as much time as she needs to come back to in person working."* HR agreed to the Claimant working full remotely until she felt ready to return to the office.
27. The Respondent offers free counselling services to its employees via the "Employee Assistance Programme". Information about this was sent to the Claimant by Ms Goldman on 7/7/23. The information was also available on the Respondent's intranet along with all its other policies – employees are regularly reminded of this and provided with the details and a link to access counselling support on a weekly basis in the "People News" company email which is sent to all staff at the end of every week. The Claimant, despite being aware of these services, chose not to use them.
28. On 13/7/23, (the day of the Claimant's father's funeral) Mrs Goldman sent a WhatsApp message to the Claimant to say she was thinking of her.
29. After the funeral, Mrs Goldman tried to have a couple of conversations with the Claimant about her father's death and how she was feeling. The Claimant made it clear she did not want to talk about the subject and firmly *"closed her down"*. Mrs Goldman ended up saying she would not ask again, and she told Ms D Hirons (HR Business Partner) that the Claimant did not want to discuss the subject. This accorded with the impression Ms Hirons had already obtained from her attempts to discuss the matter with a close friend of the Claimant.
30. In September 2023 for a second time Mrs Goldman tried to ask the Claimant how she was feeling about her father's death at which point the Claimant reminded her that she had previously said that she would not ask her again.
31. As a consequence of this stance taken by the Claimant, the managers and HR avoided raising the subject with her.
32. On 20/9/23 an inquest was held into the Claimant's father's death. The Claimant had told Mrs Goldman that there was going to be an inquest, but Mrs Goldman was not aware of the date or of any further details. 20/9/23 was a Wednesday, which was the Claimant's usual non-working day, and the Claimant had not mentioned anything to Mrs Goldman about needing time off work or any other support.

33. Following the Claimant's return to hybrid working on 4/9/23 until 19/1/24 when the Claimant resigned, the Claimant took no sickness absence, did not behave any differently at work or discuss with Mrs Goldman, HR or Mr Tewungwa that she needed further support.
34. In October 23 the Claimant sought private counselling paid for by her own insurance.
35. The Respondent encouraged relevant employees, including the Claimant, to attend viewings of TV content that they intend to broadcast in the upcoming months. In May 2023, a film depicting people attempting to take their own lives (as well as other content) was shown to employees. Some parts of the screening were perceived as distressing and some employees complained to the Respondent. As a result, it was agreed that in future advance warnings would be given about any potentially upsetting material, so employees could choose to opt-out of watching it.
36. On 6/12/23, the Respondent sent an email to its staff (including the Claimant) to provide further details about the screening the next day explaining that there was a reference to suicide in one of the shows, (Sister Boniface) although it would be "*mild and brief and contained in an historical flashback*". Staff were also advised that this show would be shown after the break in case anyone would rather stay outside. There was no direct or personal instruction to the Claimant to attend the screening.
37. On 7/12/23, the described content was shown after the break. The Claimant chose not to wait outside and instead attended and watched it. In her particulars of claim she had referred to this episode as follows : "*being forced to watch a screening that depicted suicidal acts which she had to watch with her colleagues and incredulous that the Respondent could decide what would constitute 'mild and brief' references to suicide for anyone.*" However in her oral evidence she agreed that her attendance was not mandatory, that she had not been forced to watch it, that it showed one act not acts of suicide, and that the Respondent's description of it as "*mild and brief and contained in an historical flashback*" (as part of a much longer program dealing with other matters) was accurate. Having watched the footage myself, I agree with the Respondent's description.
38. Between 7/12/23 and 19/1/24 there were no complaints or signs of problems from the Claimant despite she and Ms Goldman having daily work meetings.
39. Ms Goldman caught up with the Claimant on Thursday 11/1/24 following the former's return from holiday and the Claimant seemed fine. The following week Ms Goldman was in the office on days when the Claimant was also there. The Claimant's demeanour appeared to be entirely usual, with nothing to indicate to Ms Goldman that the Claimant was upset with UKTV or considering resigning.

40. On 19/1/24 the Claimant requested an additional meeting with Ms Goldman and during that meeting stated she was intending to resign, giving a number of reasons including : a) she was earning the same amount of money as when she joined. VoD revenue had increased substantially during her employment but that she hadn't seen any difference in pay; b) nobody picked up her work when she was off, so she does a full-time job but only gets paid on a part-time basis; c) they were doing renovation work on her house and that she was going to project manage it and then look for a job in Autumn; and d) her mum was not doing well and needed more support. Having mentioned those matters in that order she then stated that she *"felt very let down by UKTV, that nobody had contacted her over her bereavement and what had happened. That it wasn't enough to send people instructions on what to do with a website link"*. Ms Goldman then asked her *"if there was anything that we could do to change her mind"*. She responded that *"it would need to be a significant lift in salary."*
41. I reject the claim that during this meeting or at any time Mrs Goldman stated that she had forgotten to tell HR about the suicide.
42. Ms Goldman went off to see if more money could be found but that was not successful and following a second meeting with the Claimant later the same day (19/1/24) the Claimant sent in her written notice of resignation which referred to being *"let down"* by the Respondent following her father's death, and then went on to refer to her discontent about her pay. It then stated *"My final day of employment at UKTV will be Friday 29<sup>th</sup> March 2024."*
43. On 22/1/24 the Claimant spoke to a colleague Andrea Amey who gave evidence about this conversation (which I accept) as follows : *"The Claimant told me that she had decided to take a bit of a break, and the last year had been quite tough. She told me that they were in the process of carrying out some quite substantial renovation work on the house and so she was going to project manage that for now, and then look for a job later. The Claimant also told me that she was going to be speaking with HR about her departure. I assumed that she meant as part of the usual leaving arrangements. ...The Claimant did not mention anything to me about a lack of support or feeling let down by UKTV, and I have only found this out very recently"*
44. The Claimant worked only two days of her notice period but did not attend from 25/1/24 onwards. She explained in her oral evidence that she stayed away from work not because she was sick but because a lawyer friend (who she had spoken to when at the gym) had told her that as she had been constructively dismissed she did not have to work.

45. The Respondent sent her two emails on 26 and 29 January 2024 asking the Claimant to come back to work or clarify the situation. In the latter email HR explained that if they did not receive confirmation of the reason that the Claimant was not in work then they would need to treat the absence as unauthorised and it would therefore be unpaid.
46. At 5.43pm on 29/1/24, Archer, Evrard & Sigurdsson LLP, then acting for the Claimant, sent an email to the Respondent's solicitors stating: *"We strongly suggest that you advise your client not to make any further contact with our client as this is only making what is already a very bad situation, worse."*
47. On 31/1/24 the Respondent's lawyers wrote to the Claimant's lawyers *"My client is going to proceed on the basis that your client left UKTV on 24 January 2024 and they will now start to process the leaving arrangements accordingly."*
48. Archer, Evrard & Sigurdsson LLP did not provide any explanation for the Claimant's absence, say that the Claimant was too unwell to attend work or that she was seeking medical advice or that the Claimant had been signed off by a doctor.
49. Consequently, the Respondent did not send any further emails to the Claimant to enquire about her whereabouts. The Respondent stopped paying the Claimant's salary from 1/1/24 and subsequently issued her a P45 which showed that a her leaving in January.
50. The Respondent subsequently made a calculation and payment to the Claimant of her pay accrued for holiday not taken up to the end of January less the payment of salary which had been overpaid for the Claimant's last four working days of January 24 during which she had failed to work (and was therefore not entitled to the salary she had been paid for those days).

#### The law

51. In order for a claimant to establish constructive dismissal she must establish a breach of contract by the employer.
52. The breach must be fundamental and repudiatory and going to the heart of the contract – ie sufficiently serious to have justified the employee resigning immediately. The test is whether the employer's conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after she has discovered it and can walk out of her job without prior notice.



53. It is necessary that the employee left her employment with the employer in response to the breach and not for some other unconnected reason. It is sufficient for this purpose if the breach is one of the reasons amongst others for the resignation.
54. The employee must also not wait too long and so affirm the contract before resigning, but there is no fixed time limit in which the employee must make up her mind. Acts which positively affirm the continuation of the contract can amount to affirmation. It is possible to avoid affirmation by continuing to work under express protest. Mere delay does not constitute affirmation but it is possible for Employment Tribunal to infer implied affirmation from prolonged delay. Affirmation is fact sensitive, and the question is one of mixed law and fact.
55. The breach of contract can be of an express or an implied term.
56. There is a term implied by law in all employment contracts that an employer shall not without reasonable and proper cause conduct itself in a manner calculated (or) likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
57. The implied term will be breached only where there is no reasonable or proper cause for the employer's conduct.
58. The test as to whether there has been a breach of the implied term is an objective one. The motives of the employer are not determinative or relevant. If conduct, objectively considered, is calculated or likely to cause serious damage to the relationship between employer and employee, a breach of the implied term may arise.
59. The range of reasonable responses test does not apply in establishing whether a breach has taken place.
60. The breach can be by means of a single act or by a series of acts which cumulatively amount to a repudiatory breach, though each individual incident may not do so. In such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract – the question is – “does the cumulative series of acts taken together amount to a breach of the implied term?” This is the last straw situation.
61. The act constituting the last straw does not have to be of the same character as the earlier acts nor must it constitute unreasonable or blameworthy conduct although in most cases it will do so. But the last straw must contribute however slightly to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employees trust and confidence has been undermined is objective. And while it is not a prerequisite of the last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable will satisfy the final straw test.

## Conclusions

62. At the Tribunal the Claimant developed her case by submitting that given the especially harrowing events and their foreseeable extreme impact, the Respondent had an absolute duty to pro-actively manage the situation by taking the initiative in approaching the Claimant to ask her what “*hard support*” she required, or by anticipating (for example) that she might be upset by watch a film containing a depiction of a suicide, and that it could not be inferred from her reticence that all was well and that she did not require specific further support, and as the Claimant was acknowledged to be a private person, the onus was all the greater on the Respondent to be pro-active in tendering or providing support for the Claimant.
63. The Respondent’s Counsel referred to this issue in her written submission as follows:  
*“What are the parameters of the obligation in the aftermath of an external traumatic event in an employee’s personal life? And is that obligation curtailed where restraints are placed on its natural performance by the employee, including by instructing her employer that she does not wish to discuss her wellbeing or index events?”*
64. In this case the Claimant who was a private person, had suffered a harrowing bereavement. However, she also had a high degree of agency and autonomy and, having returned to work a short time after her bereavement, was able to perform her senior and demanding role satisfactorily and without taking any sick leave. She clearly made an early decision to manage her upset (caused by her father’s suicide) outside the workplace and not to “bring it to work”. She avoided discussing it with her friends at work and declined the offer of free counselling (available through the Respondent’s scheme) and instead obtained private counselling elsewhere when she needed it.
65. All the indications were that, as far as possible, she wished to continue her work as normal. She not only did not ask for help of any kind, but had gone a step further and made clear on several occasions to her line manager that she did not want her bereavement to be referred to or discussed in the workplace.
66. That being the case, had the Respondent continued trying to engage with the Claimant over this sensitive subject, that itself may well have resulted in the Claimant accusing the Respondent of unreasonable treatment.
67. I disagree with the further submission that the Respondent could have avoided talking to the Claimant about how she was feeling about her father’s death and at the same time asked her what “hard support” she may have required to cope with it. In any event even now it has not been specified what “hard support” should have been provided.

68. Therefore on the facts of this case the Respondent did not have a duty to do anymore than it did do.

69. An agreed list of Issues was produced shortly before the trial. This set out the specific alleged breaches of contract/last straw relied on. I set them out in italics below, followed by my conclusions:

*On 6 June 2023, the Claimant informed Sarah Goldman, her line manager, that her father's death had not been an accident. The Claimant alleges that she specifically asked Ms Goldman to inform HR of this fact, which Ms Goldman failed to do [GoC/§8].*

70. This is not made out on the facts. I have found that the Claimant did not ask this of Mrs Goldman.

*The Respondent did not provide a copy of their bereavement policy or discuss any support services available to the Claimant, rather she had to obtain a copy herself on the intranet [GoC/§11].*

71. Mrs Goldman did not pass the link to the policy on to the Claimant on or about 6/6/23 (when Mrs Goldman had received it from HR) because she had already told the Claimant to take whatever time off she wanted and that her diary would be cleared, and Mrs Goldman did not want to trouble the Claimant with a work policy at a sensitive time. The Claimant was provided with it on 7/6/23 (by it being made available to her on the intranet) and she took timely advantage of it.

*The Respondent did not check in on the Claimant until 21 June 2023 [GoC/§12].*

72. This is not made out on the facts. Mrs Goldman sent Whatsapp messages to the Claimant on 7<sup>th</sup> 8<sup>th</sup> and 14<sup>th</sup> June 23 and the Claimant had been provided with Mr Tewungwa's number if she needed any work contact.

*The Respondent did not enquire about or offer support to the Claimant in respect of the inquest into her father's death on 20 September 2023 [GoC/§14].*

73. The Claimant had not shown any interest in discussing the inquest and had told Mrs Goldman that she did not want to discuss her father's death or the suicide.

*The Respondent did not check that the Claimant had knowledge of its Employment Assistance Programme or whether she had any insurance to cover counselling services if needed [GoC/§16]. In the absence of any support from the Respondent, she obtained counselling herself from October 2023 [GoC/§15].*

74. This is not made out on the facts. Information about the Respondent's Counselling scheme was sent to the Claimant by Mrs Goldman by email on 7 July 2023. The details had also been made available to the Claimant previously on the Respondent's intranet and she had been reminded of this and provided with the details and a link to access counselling support on a weekly basis in the "People News" company email. The Claimant in full knowledge of

the Respondent's counselling services, subsequently decided not to use them and instead obtained private counselling.

*On 7 December 2023, the Respondent held a screening of the TV drama 'Sister Boniface', which included content relating to suicidal acts. The Claimant alleges she "felt forced" to sit through "a programme on suicide" having only recently lost her father to suicide "in the most harrowing of circumstances" of which the Respondent was aware, and was "an action designed to cause maximum upset" [GoC/§34].*

75. This is not made out on the facts. The Claimant alongside the other employees was told specifically that she did not need to watch the "suicide" footage on 7/12/23 and could opt out. Objectively this was reasonable behaviour from the Respondent, and the antithesis of "forcing". The Claimant could easily have simply decided to stay outside. If she had done so, it is unlikely that anyone would have remarked about the Claimant's absence from that particular section of the screening, but if anyone had remarked, that need not have triggered a discussion of the Claimant's bereavement if she chose not to engage in one.

76. The footage was mild and brief and contained in an historical flashback. The Claimant's demeanour at the time and for the following 6 weeks following the screening and up to immediately before the resignation, did not display any sign that she had felt "forced" to view or had been upset by the footage she viewed on 7/12/23, and I find that she did not in fact feel forced or upset at the time; - but even if I am wrong about this, then that subjective reaction would be insufficient to establish a breach of contract or a last straw. The screening was plainly not designed to cause maximum upset, but was done for reasonable business purposes.

77. I find that the matters complained of singly or in combination did not amount to any breach of contract by the Respondent, (whether of the implied term of trust and confidence or the implied duty of care to employees or any other term) let alone a fundamental one. Nor can the screening on 7/12/23 being properly categorised as a last straw.

78. The questions of affirmation and the reasons for resignation therefore do not arise and I do not deal with them.

79. The Claimant's claim of constructive unfair dismissal fails and is dismissed.

#### Holiday pay

80. The Claimant was not dismissed. The correspondence at the end of January 24 was legally inconclusive and did not go far enough to constitute either an earlier resignation by the

Claimant or an effective dismissal of her by the Respondent. Her employment therefore ended on the expiry of her written notice of resignation on 29/3/24.

81. The Claimant was paid all her holiday pay, (less a set-off for overpayment of salary until the end of January 2024).
82. However, under her contract she was entitled to 5 days' pay in lieu of contractual holiday which accrued during February and March 24. I do not find that either her failure to work during those months or the terms of her written contract deprived her of her entitlement to be paid for that unused holiday when her employment ended. She is due 5 days' pay in that regard. Her holiday pay claim therefore succeeds in the amount of 5 days' pay which must be paid to her net. Leave to apply.

Employment Judge J S Burns  
16/10/2024

For Secretary of the Tribunals

Date sent to parties  
25 October 2024

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