



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr M Godinho

v

**Respondent:**  
Leicester City Council

**Heard at:** Leicester (19- 21 February)  
Nottingham (via CVP) 4 March

**On:** 19-21 February; 4 March 2024

**Before:** Employment Judge Fredericks-Bowyer

## Appearances

For the claimant: In Person (did not attend 21 February 2024)

For the respondent: Mr S Butler (Counsel)

## JUDGMENT

The claimant's complaint of constructive dismissal is not well founded and is dismissed.

## REASONS

### Background

1. I gave oral judgment dismissing the claimant's claim on 4 March 2024, with the parties in attendance via Cloud Video Platform. The claimant was in an anxious state on the final date, and was worried about his health. Conscious that it is possible that the claimant could not fully digest the reasons why the claim was dismissed, I said I would provide written reasons with the judgment dismissing the claim. These are those reasons.
2. I am sorry for the delay in producing this written judgment. Hopefully there is comfort in the parties having known the outcome and heard the reasons why since the final day of the hearing.

3. The claim arises following the claimant's long sickness absence from 1 April 2021 to 3 February 2022. The claimant complains that his former line manager leaked details of his upcoming return to work meeting to someone who was not employed by the respondent, who in turn told present colleagues such that many people knew of the details of the return to work meeting. The claimant complained about this and raised a grievance, explored returning to work under a different manager, and ultimately resigned on 27 September 2022, around eight months following the repudiatory breach he relies upon to found his claim of constructive dismissal.
4. The respondent is a local authority. The claimant was employed as a Neighbourhood Services Assistant, based in local libraries. The respondent denies the claims, pleading that there was no repudiatory breach of contract and that, if there was, the delay in the claimant resigning meant that either (1) he did not resign in response to the alleged breach, or (2) he affirmed the contract through his willingness to return to work over the following eight months before dismissal.

### **The hearing**

5. The hearing was listed to take place in person in Leicester on 19, 20 and 21 February 2024. I heard evidence over the first two days, and closing submissions were to be presented on the final morning. The claimant did not attend on 21 February 2024, first saying that he would not be able to attend in the morning because of a medical emergency, and then saying that the situation was not resolved for the afternoon session. I was told different information about the nature of the problem and the whereabouts of the claimant, but in response to my order the claimant produced evidence that an ambulance had attended him because he had called 999.
6. The final day was re-listed on 4 March 2024, and was listed by CVP to assist the claimant to avoid the stress of travelling to a hearing centre to present his closing argument. I joined the hearing from the Nottingham hearing centre. The claimant had indicated that he would provide written closing submissions. On the morning of 4 March 2024, the claimant contacted the Tribunal to ask if he could be excused from attending. He did join the hearing to explain the reasons for his request, and cited health grounds. He said the stress of the hearing made him worried he would have a heart issue (he had previously provided evidence of a heart condition).
7. I advised the claimant that it would be in his interests to take part in the hearing, and that I was concerned about the fairness of the hearing if he absented himself and I heard only from the respondent side. After some time to think about it, the claimant decided to stay for the hearing. He joined by telephone rather than by CVP link, but was permitted to do so as it seemed that this was the only way he could take part in the hearing. The claimant's closing written submissions were provided and were very detailed. He was able to supplement them orally however he wished.
8. The claimant had adjustments made for the other days in the hearing where he did attend in person. After he had explained his health condition and fear of cardiac arrest with stress, it was agreed that the claimant would benefit from regular breaks. This included the ability to ask for a break at any point. The claimant was also provided with significant leeway in terms of punctuality upon arrival in the morning for the hearing and returning from breaks.

9. I am not confident returned on time to the hearing at any point across day 1 and day 2, but I disregarded the issue and did not mention it in order to avoid causing the claimant stress. There would have been plenty of time in the three day listing if the claimant had not had his medical emergency on day 3.
10. The claimant represented himself in the hearing. He gave evidence himself and called additional evidence from: (1) Ramiz Badami (former Neighbourhood Service Assistant at the respondent); and (2) Marnie Karim (former Library Assistant at the respondent). The respondent was represented by Mr Butler of Counsel. The respondent called evidence from: (1) Matthew Vaughan (Area Development Manager at the respondent); (2) Hiten Patel (Area Development Manager at the respondent); and (3) Stewart Doughty (Head of Parks and Open Spaces at the respondent).
11. I also had access to a bundle of documents which ran to 325 pages. Page references in this judgment refer to the pages of that bundle.

### The issues

12. There was a case management hearing in this claim before Employment Judge McTigue on 12 October 2023. Directions were provided for the hearing. At paragraph 6 of his case management summary, EJ McTigue recorded:-

*“The claimant brought a grievance in respect of the above incident but, before me today, he confirmed that his grievance was conducted fairly and so the conduct of his grievance does not form part of his constructive unfair dismissal claim”.*

13. At paragraph 17 of EJ McTigue’s orders, he records that the parties must inform the Tribunal within 14 days if anything in the case management summary is considered *“inaccurate and/or incomplete in any important way”*. The claimant did not raise any concern or disagreement with paragraph 6 of the case management summary.
14. At the outset of the hearing, the claimant sought to re-introduce an argument about the fairness of the grievance process. He felt that the process was unfair. He was also certain that the alleged repudiatory breach he relied upon was the sharing of his data with a third party. This is in line with his pleaded case, which does not mention at all the grievance process or anything post dating the breach until his resignation.
15. I pointed out that this was a little at odds with the idea that the grievance formed part of his reason for dismissal. He accepted this view, and said his concern was that he did not want anybody to conclude that he was happy with the grievance process. This judgment does not do that. I asked the claimant if he was proposing to amend his claim to include matters not raised in his claim form, given that his witness statement also appeared to link his resignation to his unhappiness with the grievance outcome. He said he was not, but may wish to do so at the end of the hearing once the evidence has been heard. Although this would be procedurally unusual, it did not arise because no such application was made.

16. Following this conversation, it was agreed that the list of issues set by EJ McTigue was broadly appropriate. Mr Butler said that the respondent was in a position to make some concessions in the issues. He confirmed that the respondent accepted that a third party came to know about the claimant's return to work meeting, it just could not be sure which person from the respondent leaked that information. The respondent also conceded that there could be no reasonable and proper cause for that information being disclosed. Finally, there were issues set on the premise that the breach of contract might have been done for some other potentially fair reason. Those arguments were not pursued and the issues were discarded.
17. It was therefore agreed that the issues in the case are as set out below (I do not include the remedy issues agreed because they fell away when the claim was dismissed):-
- 17.1. *Was the claimant dismissed?*
- 17.1.1. *The respondent disclosed details of the claimant's return to work meeting on 3 February 2022 with an unrelated third party –*
- 17.1.2. *Did that disclosure breach the implied term of mutual trust and confidence because the respondent had behaved in a way that was calculated or likely to destroy or seriously damage that implied term?*
- 17.1.3. *Did the claimant resign in response to the breach? [Was the breach of contract a reason for the claimant's resignation?]*
- 17.1.4. *Did the claimant affirm the contract before resigning? [Did the claimant's words or actions show that he chose to keep the contract alive even after the breach]*

## Findings of fact

18. The relevant facts as I find them, on the balance of probabilities, are as set out in this section. Where I have had to resolve a conflict in the facts, I indicate how I have done so at the point that conflict arises.
19. The claimant was employed by the respondent as a Neighbourhood Services Assistant from 31 August 2018 to his resignation on 27 September 2022. He was engaged on a fixed term contract until 31 March 2019 (page 64). That contract was extended on the same terms until 30 June 2020 (page 74). That role was made permanent on the same terms from 1 July 2020 (page 75). The claimant's place of work clause under the contract (page 65) reads:-
- "You will initially be based at Area 4, however as part of your terms of employment with Leicester City Council, you may be required to work out of any other council building."*
20. The claimant worked across two library sites prior to his sickness absence – (1) Hamilton Library, and (2) St Barnabas Library. Other libraries were within 'Area 4'. The claimant could be placed in any library building run by the respondent as part of

his role. The claimant's line manager was Tracey Delaney. From January 2021, Mr Vaughan was Ms Delaney's line manager.

21. The claimant was absent from work with ill health from 1 April 2021. On 21 January 2022, Mr Vaughan e-mailed the claimant to ask him if he was going to return to work following expiry of his fit note on 31 January 2024. He also asked the claimant to return a stress support plan so that the respondent could understand what support the claimant would need upon his return to work (page 78). The claimant replied (page 78) on the same day attaching the plan. The claimant also asked if he could be transferred to a different library because of *"the issues that have presented at that particular library"*.
22. The claimant's stress support plan (pages 81 to 85) identified a number of challenges with colleagues, including Ms Delaney, which left him feeling bullied, and which he says contributed to his ill health. On 24 January 2023, the claimant confirmed that he would return to work at the end of his fit note (page 86). On 27 January 2022, he agreed to the option of making a *"part sick/part return"* to work (page 87).
23. On 27 January 2022, Mr Badami was working at the respondent in the same role as the claimant. He received a telephone call from a retired former colleague, in which she told him that Ms Delaney had disclosed to her that the claimant would be returning to work the following week from his long-term sickness absence. Mr Badami says, and I accept, that the former colleague was able to tell him the location, date, time, nature of the meeting and the attendees at the meeting. Mr Badami contacted the claimant on the following day to wish him good luck with that return, but then discovered that the claimant himself did not know about the meeting.
24. The claimant contends that Ms Delaney told the former colleague about the meeting. He says that she was his line manager and she disclosed sensitive confidential information about him to a third party outside of the respondent. He draws upon Mr Badami in support of that notion, whose evidence I accept. I also accept the evidence of Ms Karim, whose only point of evidence was that she had heard Ms Delaney discussing personal matters of employees previously, which ought to have been kept confidential.
25. In the grievance process that followed this incident, and in this hearing, the respondent accepts that a disclosure was made. It does not admit that the disclosure was by Ms Delaney, because the grievance manager, Mr Patel, had asked Ms Delaney about it and she denied that it is something she would do. Ms Delaney did not give evidence in the hearing, although Mr Patel notes that others at the respondent would have known about the claimant coming back to work and so the information was not something only Ms Delaney knew about.
26. I am asked by the claimant to find that Ms Delaney made the disclosure. On the balance of probabilities, I find that she did. I do so for the following reasons:-
  - 26.1. I accept the evidence of Mr Badami that that was what he was told;
  - 26.2. I accept the evidence from Ms Karim that this is the sort of thing that Ms Delaney would do;

26.3. Although I accept Mr Patel's evidence of what Ms Delaney told him, it is apparent to me that he did not press the point with her or conduct any wider investigation to corroborate her response;

26.4. Ms Delaney did not give evidence and so I have no directly contradictory view before me; and

26.5. I accept that the claimant also considers that this is something Ms Delaney would do based on his experience of working with her and their previous interactions.

27. I therefore agree with the claimant that his line manager disclosed sensitive information about his return to work with a third party. I accept his evidence that he found this deeply personally upsetting and unacceptable, that it caused him to raise a grievance, and that it caused him to lose trust and confidence in the respondent as his employer. At paragraph 14 of his witness statement, in evidence I accept, the claimant says that:-

*"The respondent has already been found guilty by the Information Commissioner's Office of the data protection breach that forced my resignation (pages 324 & 325)."*

28. That page reference refers to a letter to the respondent from the ICO which summarises the complaint the claimant made, which included provision of the grievance outcomes acknowledging the disclosure. The part referenced by the claimant reads:-

*"We have considered the information available in relation to this complaint and we are of the view that the Council has not complied with their data protection obligations."*

29. I therefore agree with the claimant that the ICO considered Ms Delaney's disclosure to be a breach of data protection law in respect of the claimant's data.

30. Following the disclosure made, which caused the claimant to lose trust and confidence, I find that the claimant did the following things as part of his continuing employment at the respondent:-

30.1. Drew salary from 28 January 2022 to 27 September 2022;

30.2. Arranged a return to work meeting which took place on 3 February 2022 (page 88);

30.3. Attended the meeting;

30.4. Arranged to return to work;

30.5. Began working at Pork Pie Library, where he had not previously worked;

30.6. Began working at Knighton Library, where he had not previously worked;

- 30.7. Submitted a grievance about Ms Delaney on 7 February 2022 (pages 103 to 105);
- 30.8. In his grievance e-mail, writing – *“I am not only for the needs of the service but also for my own well being needs, trying to in partnership with yourself resolve this latest setback and resume my work to the high standards I enjoyed previously”*;
- 30.9. Attended a grievance meeting on 25 February 2022, where he agreed he had said – *“Therefore I would like to be transferred to another library away from Hamilton and St Barnabas... I would not like to be located at Central due to the issues at that library”*;
- 30.10. On 23 March 2022, completed his phased return to work and resumed full hours;
- 30.11. Went on sick leave immediately following 23 March 2022 and reported his absence according to respondent sick policy;
- 30.12. On 7 April 2022, e-mailed Mr Vaughan (page 163) reflecting on disappointment at being off work, writing – *“...after the progress done at Pork Pie and Knighton its bitterly disappointing to be taken down by this”*;
- 30.13. On 27 April 2022, e-mailed Mr Vaughan (page 160), writing –  
*“I would’ve liked to be in a position to return at the end of the fit note this month but realistically I am still dealing with symptoms considerably to the point I would struggle at work.*  
  
*I have seen some improvement and I very much hope that it steadily continues so that I can come back as soon as possible”*;
- 30.14. On 4 May 2022, e-mailed Mr Vaughan (page 160) to advise that he could still not yet return to work, writing – *“the GP recommendation may come as a disappointment to yourselves but as always I’m trying my best to recover as quickly as possible from this setback”*;
- 30.15. On 17 May 2022, appealed the grievance outcome which he disagreed with;
- 30.16. Engaged with the grievance appeal process, including re-arranging meetings and expressing a keenness to attend meetings;
- 30.17. On 22 July 2022, e-mailed Mr Vaughan (page 217) with the hope that all will be resolved following the grievance appeal, writing –  
*“following this hearing I very much hope to come back to work... I am looking forward to these on-going have been fully addressed paving a sustainable return to work”*;
- 30.18. On 30 August 2022, e-mailed Mr Vaughan (page 244) to say that he is *“now considering my continuity in this position I have within the Council”*;

30.19. Attended the grievance appeal meeting on 4 September 2022, where he said that he “*want[s] a constructive dismissal*”; and

30.20. On 27 September, resigned by e-mail (page 264), writing –

*“Following the appeal hearing held at Town Hall on 14<sup>th</sup> August regarding a breach of my confidentiality, I have regretfully come to the conclusion that my current position with Leicester City Council is untenable.*

*As such I see no option but to resign my position under Constructive Dismissal as indicated at the hearing.”*

31. The claimant’s employment ended on 27 September 2022.

## Relevant law

### *Constructive dismissal*

32. An employee is entitled to treat themselves as constructively dismissed where they terminate their employment contract following the employer seriously breaching that contract in a way which goes to the root of the employment contract (*Western Excavating (ECC) Ltd v Sharp [1978] QB 761*).

33. The serious, or repudiatory, breach of contract may be to express provisions of the employment contract or to provisions which are implied into the contract by case law. All employment contracts contain a 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 employer and employee*” (*Malik v BCCI SA (in Liquidation) [1998] AC 20*, as amended by *Varma v North Cheshire Hospitals NHS Trust [2007] 7 WLUK 116*).

34. Whether or not there has been a breach to the implied term of trust and confidence is an objective question and the employer’s intentions are irrelevant. If the employer commits conduct which is likely to destroy or seriously damage mutual trust or confidence, then it will be deemed to possess the subjective intention (*Leeds Dental Team Ltd v Rose [2014] ICR 94*) and the employee is likely to be able to accept that repudiatory breach and terminate the employment contract (*Morrow v Safeway Stores Plc [2002] IRLR 9*).

35. The determination as to whether a breach is sufficiently serious as to constitute a repudiatory breach is an objective test, and it does not matter that the employer might genuinely believe a breach to not be repudiatory (*Tullett Prebon Plc v BCG Brokers LP [2011] EWCA Civ 131*). The overall repudiatory breach may be a single act or a collection of smaller breaches or a series of events which are not individually breaches but which amount to a breach when put together (*Garner v Grange Furnishing [1977] IRLR 206*).

36. To accept a repudiatory breach of contract and claim constructive dismissal, an employee must resign or treat the employment contract as having ended in response to the breach. It is sufficient for these purposes for the breach to have played a part



in the decision to resign (Wright v North Ayrshire Council [2014] ICR 77). The tribunal is able to ascertain the true reason for the employee's resignation (Weathersfield Ltd v Sargent [1999] ICR 425).

37. When faced with a repudiatory breach of contract, an employee could choose to either accept the breach, which ends the contract, or could affirm the contract and insist upon its further performance. Failure to resign or act in a way which treats the employment contract as ending risks the employee either affirming the contract or waiving a breach of the contract of employment. When considering whether a contract has been affirmed, the tribunal will look at all of the circumstances of the case (WE Cox Turner (International) Ltd v Crook [1981] ICR 823). Affirmation may be inferred by conduct and what the claimant says or does which shows that they intend the contract to continue (Chindove v William Morrison Supermarkets Plc EAT 2001/13).
38. Employees should be careful when choosing to continue to work for a period if they intend to rely upon a repudiatory breach of contract in a constructive dismissal claim. In Quilter Private Client Advisers Ltd v Falconer [2020] EWHC 3294 (QB), Calver J said, at para 121:

*"It is undoubtedly the case that if the employee decides to accept the repudiatory breach, he must do so unambiguously and with sufficient dispatch. If his purported acceptance is delayed, he runs the risk of a court finding that his action has not been sufficient to discharge the contract. However, in my judgment it is what happens during the delay which is the critical feature: provided the employee makes unambiguously clear his objection to what has been done by the employer, he is not necessarily to be taken to have affirmed the contract by giving a short period of notice, and continuing to work and draw pay for a limited period of time ... It all depends upon the facts of the particular case whether the employee has nonetheless unambiguously accepted the repudiation of the employer and with sufficient dispatch. The length and circumstances of the delay require to be examined in each case."*

## Discussion and conclusions

39. The claimant claims that the disclosure of information about his return to work meeting to a third party is the repudiatory breach of contract that he relies upon. This is what is in the claim form. This is what he said in the hearing before EJ McTigue, This is what he told me his claim is all about at the start of the hearing. He seems to have realised, at some point since the McTigue hearing, that this could present a problem for his claim, because he has sought to imply that the end of the grievance process was the event that triggered his resignation. The problem with that approach is that he has not pleaded or argued that anything to do with the grievance process was a *breach of contract*, or even unfair. He just does not agree with it and thinks that it did not operate properly to come to the correct outcome.
40. I am required to judge the claim that is made and the case that is put, and the claimant appeared to realise on the final morning of the hearing that he had not met the bar required for constructive dismissal before I gave my judgment. In this section, I answer each question posed in the list of issues in turn.

*Did the disclosure to a third party act in a way likely to destroy or seriously damage the implied term of mutual trust and confidence?*

41. Mr Butler submits that, even if I am with the claimant on the facts (which I am), then there is no breach of contract sufficiently serious to have met the test in Malik. He submits that the disclosure is not likely to have destroyed or seriously damage the implied term of mutual trust and confidence. This is because no details about the claimant's condition were disclosed. The nature, time, place and attendees for the meeting would likely be known internally, and may have been visible on team calendars. Mr Butler submits that the third party would already have known that the claimant was on long term illness leave, and that he had a long-term condition when at work. For that reason, it is argued, the only personal information disclosed which the recipient did not know is that the claimant was now well enough to return to work. It is also noted that the claimant is not complaining about other colleagues at the respondent knowing about his return.
42. The claimant submits that the disclosure does breach the implied term of mutual trust and confidence. He relies upon the fact that the recipient is a third party who had no proper business knowing about the meeting or that he was now well enough to return to work. He says that the recipient and he had had a difficult history in the past, as he had with Ms Delaney. He draws support from his grievance about the issue being partially upheld, and the letter from the ICO confirming that, after reading documents produced from each side, there had been a breach of data protection obligations that the respondent owed the claimant. The claimant also references the length and sensitivity of his illness absence. By extension of that, it is clear to me that the return was precarious, in that the claimant only lasted one day on full hours before going off sick never to return. It was, on its facts, an extremely sensitive situation where the claimant was keen and wanted to return to work.
43. In my judgment, it would be perverse for the ICO to confirm that an employer had breached data protection obligations in respect of something relating to the sensitive health of an employee, and for me to conclude that the Malik test had not been met. The claimant has the right for his health and sick leave information to only be known to those who needed to know it. Nobody outside of the respondent falls into that group. In my view, it does not matter that the information disclosed was limited. The whole of the matter should have been confidential and contained within the organisation. Such matters are particularly sensitive for employees returning to work from a long illness, where the return will usually need to be carefully managed because it could be precarious. These points certainly applied in this case.
44. I conclude that the test set out in Malik is met. The respondent did act in a way which was likely to destroy or seriously damage the implied term of mutual trust and confidence. The claimant considers it was destroyed at the moment he learned of what Ms Delaney had done. I do not doubt him in that view.

*Did the respondent commit a repudiatory breach of contract?*

45. Ms Delaney's actions breached the implied term of mutual trust and confidence between the claimant and the respondent. It is always going to cause a repudiatory breach of contract when that term is breached, and the party breaching the term is

then at risk of the repudiation being accepted by the other party bringing the contract to an immediate end on that basis.

46. The respondent committed a repudiatory breach of contract. Whether or not there is then a constructive dismissal depends on the claimant's next actions after suffering the breach.

*Did the claimant resign in response to the breach?*

47. Wright confirms that the breach does not need to be the entire reason, or even the most significant, reason for the resignation which follows. It is sufficient for the purpose of this part of the test for the breach to be one of a number of reasons for the resignation. It must simply positively affect the decision to resign in some way.

48. Mr Butler submits that the claimant does not resign in response to the breach because he indicated several times following it that he wished to continue in his employment. Mr Butler submits that it is only after the grievance process does not agree with him that he chose to resign, meaning that he has not resigned in response to something that is pleaded as the repudiatory breach of contract. The claimant says that he did resign in response to the breach, because he consistently raised addressing the breach from when it happened right through to referencing it in his resignation letter. He notes that the grievance process was about the breach, also, and it is the thread which runs through the case.

49. I agree with the claimant on this point. In my judgment, the claimant clearly chose not to resign in response to the breach upon its discovery on 28 January 2022. He chose not to resign in response to it at any point up to 27 September 2022. At that point, he resigned and his resignation is in part justified with reference to the breach. In my view, he would not have resigned and claimed constructive dismissal if the breach had not happened. That is, I consider, sufficient to find that he resigned in response to it.

*Did the claimant affirm the contract before his resignation such that he waived his right to treat the contract as having been repudiated?*

50. Affirmation is a difficult concept for litigants in person to understand, perhaps because it is human nature to try to resolve a situation and give the employment at least one more chance before 'giving up' and deciding that it cannot continue. The law of contract in relation to repudiation, across all areas of law, is clear that that is rarely permissible. Where there is repudiation, the repudiation must be accepted. If a party acts in a way which infers that they consider mutual contractual obligations are still in place, then they will have affirmed the contract.

51. There is a little flexibility, as can be seen from my self-direction in respect of Quilter, Crook, and Chindove. Those authorities are clear that if, in all the circumstances, I consider that the claimant acted as if the employment relationship was continuing for a period of time too long to be 'taking stock' or 'making a decision', then the claimant will have affirmed the contract.

52. The claimant says that he did not affirm the contract because, from the breach, he never returned to his previous working pattern fulfilling his contractual hours. His

written argument went into some detail around this point but, at its core, the argument is as simple as this. He also seeks to explain away the e-mails where he expressed keenness to work at the respondent as only being expressions that he had liked his job and would like it to continue. It should not, he says, be taken as an indication that the employment contract is continuing.

53. In reply, Mr Butler points to all of the factual matrix between the parties between 28 January 2022, when the claimant discovered the breach, and 27 September 2022, when he resigned. In that eight month period, the claimant did or engaged in some way with all of the events I have found as facts in the long list at paragraph 30 above. In short, the claimant did nothing at all to indicate that the employment contract was at an end because he accepted repudiation. He raised a grievance about the issue, using the policy which was set out in part in his employment contract. He did not return to work according to his contract, as he rightly notes, because he was signed off sick. It was not because of the breach. In the alternative to fulfilling his contractual hours, the claimant reported ill using the respondent's required procedures and supplied fit notes in order to maintain that status and receive pay in consideration for his continued reporting in sick.
54. In addition to these engagement with respondent processes, and drawing pay, the claimant allowed eight months to elapse without accepting repudiation. In that time, he sent several e-mails indicating a desire and willingness to return to working at the respondent, to be bound by his contract, in response to which the respondent held a place for his return as it was contractually obliged to do.
55. In my judgment, these events must cause me to conclude that the claimant affirmed the contract. There is no protest other than the grievance, which was surrounded by constructive wording in relation to finding a way to resolve the problem to continue working. All contractual obligations, flowing in each direction, where the claimant is on sick leave, were fulfilled.
56. I conclude that the claimant did not accept the respondent's repudiatory breach of contract. Instead, through a combination of his actions, his e-mails, and his words in meetings, the claimant has shown an intention to remain bound by the employment contract. The employment contract was affirmed.

*Was the claimant constructively dismissed?*

57. I have concluded that the claimant affirmed the contract of employment before his resignation. He has therefore lost his right to resign and claim constructive dismissal because he has, by his actions, shown that he intended the contract to continue. If he had resigned immediately upon learning of the disclosure, then the claim he now seeks to bring would have been available to him. By 27 September 2022, it was not. The claimant was not constructively dismissed.

### **Overall disposal**

58. Having found that the claimant was not constructively dismissed, his complaint of constructive dismissal must be dismissed.

**Case Number: 2602472/2022**

**Employment Judge Fredericks-Bowyer**

29 May 2024

Sent to the parties on:

...31 May 2024.....

For the Tribunal Office:

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