



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Mcloughlin

Respondent: Gaskells (North West) Ltd

Heard at: Manchester (by CVP)

On: 19-20 March 2024

Before: Employment Judge Parkin

REPRESENTATION:

Claimant: In person

Respondent: Ms A Wright, Employment Consultant

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was constructively dismissed and her complaint of unfair dismissal is well-founded; she was unfairly dismissed.
2. Consideration of remedy is adjourned to 17 April 2024, at 10am. The Hearing will be held by CVP video with a time allocation of 3 hours.

REASONS

1. The proceedings

The claimant claimed constructive unfair dismissal by the respondent from her position as its Fleet Manager, contending she resigned because it had breached the implied term of trust and confidence in her contract of employment by changing her job role and effectively demoting her without consultation. The respondent denied it had committed any fundamental breach of contract entitling the claimant to resign and contended it had

reasonable and proper cause for acting as it did; it also denied that the claimant had resigned because of any such breach.

2. The hearing

2.1 The hearing was listed for 2 days, by CVP video. In the event, only liability was determined at this hearing. Judgment was delivered, with reasons reserved to be sent in writing. There was an agreed Bundle of Documents (1-275) and on Day 2 the respondent disclosed its conditional offer of employment to Mr Burns dated 14 July 2023 (R1-5), which was put in evidence. The claimant gave oral evidence as did the respondent's Managing Director Mr Jonathan Gaskell and Operations Manager Miss Sarah Gething, based upon their respective witness statements.

2.2 There was very little conflict of evidence between the parties. On the few matters where there was a difference of evidence or of recollection, the tribunal tended to prefer the recollection of the claimant of matters highly personal to her in contrast to the broader sweep and generalisation given in evidence by the respondent's witnesses, especially Mr Gaskell. The tribunal concluded that their evidence was somewhat influenced by the passage of time, not least in their version that the claimant had always known there would be a Workshop Manager appointed and had been enthusiastic or at least "on board" about the imminent appointment of such a manager on 13 July 2023. The tribunal preferred the claimant's version that the topic of appointing a Workshop Manager at senior level (with the result that she would no longer have responsibility for service and maintenance or manage those responsible for it) was not directly discussed with her and also that she had told both Mr Gaskell and Miss Gething on 13 July that she wished to take time to "think about it" i.e. consider the impact of such an appointment on her own position and role (and was not immediately enthusiastic as they supposed).

3. The Issues

As discussed with the parties at the hearing and following case management by Employment Judge Leach, the tribunal had to consider the following issues with the burden of proof resting on the claimant to prove that she was constructively dismissed.

3.1 Did the respondent do the following acts or omissions:

3.1.1 Make a major change of the role of the Claimant and remove her key responsibilities including management responsibility for her team, effectively demoting her.

3.1.2 Fail adequately to consult with the claimant about the proposed changes: not holding a meeting with the Claimant to discuss changes, only handing her a changed job description but giving her no opportunity to discuss changes due to the new Workshop Manager being employed prior to her return from annual leave.

3.2 Did those acts or omissions breach the implied term of trust and confidence?

Taking account of the acts or omissions it found, individually and cumulatively, the tribunal needed to decide:

3.2.1 whether the respondent had reasonable and proper cause for those actions or omissions, and

3.2.2 if not whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

3.3 Was the breach a fundamental one? The Tribunal needed to decide whether any breach was so serious that the claimant was entitled to treat the contract as being at an end, a repudiatory or fundamental breach.

3.4 Was any fundamental breach of contract a reason for the claimant's resignation/

3.5 Did the claimant affirm the contract before resigning, by delay or otherwise?

At the hearing, the respondent did not contend there was any affirmation of contract following any fundamental breach.

3.6 Has the respondent shown the reason or principal reason for the fundamental breach of contract?

At the hearing, the respondent did not pursue the alternative argument that, if there was a constructive dismissal, it was for a potentially fair reason such as the claimant's capability and was fair. Therefore, if the claimant proved she was constructively dismissed, her dismissal would have been unfair.

4. The Facts

From the oral and documentary evidence, the Tribunal made the following key findings of fact on the balance of probabilities.

4.1 The respondent business provides collection, treatment and disposal of hazardous waste and waste management services primarily from its main base in Foster Street, Liverpool with a fleet of vehicles and drivers and some 100 employees. Its founder, Managing Director and majority shareholder is Jonathan Gaskell to whom the Operations Manager, Sarah Gething, reports.

4.2 The claimant commenced employment with the respondent on 5 March 2014 initially as a relatively junior and lowly paid receptionist before progressing to become Contracts Administrator, Fleet Administrator (reporting to other Fleet Managers) and finally, from November 2021, Fleet Manager. This was a very important and responsible position reporting to the Operations Manager and working alongside the Service Manager who managed the day-to-day routes and collections of the wagons and lorries.

4.3 Whereas previous Fleet Managers had had a mechanical or technical background, the claimant had no such background but had convinced her employer because of her ambition, dedication and conscientiousness together with the knowledge of the business and experience she had built up and learnt from her managers that she was nonetheless suitable to be appointed to the position. As Fleet Administrator, she had already built relationships with external maintenance providers and the respondent's fitters. There was no external recruitment process.

4.4 In Autumn 2021, she was trained and developed by the respondent paying for and putting her through training courses including CPC (Certificate of Professional Competence), essential management skills and Operator Licence awareness training. As Fleet Manager she was also Transport Manager and the sole named person on the Operator Licence and responsible not only for the compliance with all vehicle and road traffic regulations but also for the service and maintenance of the fleet of vehicles. Her management responsibilities included managing the two on site fitters, two outside contractors as well as oversight of the external maintenance providers who worked on the respondent's Mercedes vehicles and later managing a Fleet Administrator. She completed her probationary period in May 2022 and was given a pay increase to £40,000 per annum.

4.5 In Spring/Summer 2022 the respondent paid for the claimant to undergo driving lessons and she successfully passed her driving test, whereupon the respondent provided her with a company car.

4.6 Throughout her time as Fleet Manager she encountered difficulty and personality conflict dealing with the Service Manager; like her, he was line managed by Miss Gething. This included her raising a formal grievance in November 2022 about his sexist comment made in the presence of other junior personnel. Her grievance was upheld and led to Miss Gething arranging mediation between the two. Although this appeared successful initially, the difficulties soon resurfaced, with the claimant holding the view that the Service Manager continued to fail to undertake the set tasks she had itemised and delegated to him on Miss Gething's direction. A further meeting was held in January 2023 to discuss the claimant's concerns.

4.7 Until early 2023, the claimant had a very close working relationship with her line manager Miss Gething. Miss Gething felt that this closeness tailed off in 2023 and that the claimant became short and obstructive in her manner with personnel other than herself and Mr Gaskell. Miss Gething felt the claimant did not actively raise with her ongoing concerns about the issues with the Service Manager over the ensuing months before June 2023.

4.8 For her part, the claimant felt less supported by Miss Gething in 2023, in particular over her difficulties with the Service Manager. She wrote at length to Miss Gething on 17 January 2023 (183-186) especially about being undermined by the Service Manager; saying she found the pressure and responsibility of being Transport Manager (named on the Operator Licence) as well as Fleet Manager without administrative support onerous

and undervalued. She sought a pay review and feared “burning out”, saying the situation was “dragging her down”.

4.9 Miss Gething answered her concerns point by point but without acknowledging any undermining by the Service Manager. She stated that there would be a pay review in April, pointing out the claimant’s pay rise the previous view. She proposed weekly meetings; however, the length and detail of the email exchange between the claimant and her line manager (which was highly unusual as evidenced by the documents in the Bundle) speaks to the erosion of their close working relationship.

4.10 The claimant had regular contact with the Managing Director Mr Gaskell; she saw him on almost a daily basis informally and more formally two or three times a week and she was able to discuss work matters with him.

4.11 By late 2022/early 2023, in addition to her regular compliance and workshop management responsibilities, the claimant was very heavily engaged in sourcing contractors, tools, equipment and day today project management of the workshop project, under the overall direction of Mr Gaskell. In addition, there was a heavy input into the setting up of advanced maintenance software to computerise and bring up-to-date the respondent’s disorganised paper service records of defects, MOTs and maintenance of its fleet of vehicles (which was fully within the ambit of the claimant’s job role).

4.12 The workshop project was the conversion and fitting out of premises to fulfil the respondent’s long term aim of carrying out most or all maintenance and service on its fleet of vehicles internally and even, in the future, offering mechanical services to external third party operators on a commercial basis. This aim was driven by the very high levels of mechanical failures and inadequate servicing experienced as a result of poor maintenance by both the respondent’s internal fitters and in particular its external contractors on Mercedes vehicles. Since many vehicles in the fleet were elderly, there was always a high level of maintenance required. Mr Gaskell and Miss Gething were very concerned that many vehicles in the fleet were generally under-utilised and also that high rental costs were regularly incurred when the respondent hired in outside vehicles because its own vehicles were off the road. The project was a very major one, involving some £½M investment, and was especially important as the respondent’s business grew as it was already doing and was expected to continue to do so. Even by 2023, the respondent was looking to buy an existing waste business in Cardiff and expand into South Wales and open a site in Telford for business in the Midlands in addition to its base of operation in the North West and outpost in North Wales.

4.13 Whilst it was agreed between Mr Gaskell and Miss Gething that when the new workshop was complete and fully up and running, it would need to be supervised or managed by a technically skilled person, there was no evidence of any specific discussion with the claimant about this. In particular, in evidence they were unable to point to any discussion with the claimant where they shared an intention that a manager at senior level would specifically need to be appointed to manage the workshop and all maintenance personnel.

4.14 Although there was a general recognition that with a full in-house workshop operation the business would need a technically skilled person who could challenge and question the in-house workshop team and any outside contractors on the detail of servicing and maintenance work, the claimant's overall management of the workshop was not questioned with her. Even when there were serious issues raised about the performance of a long serving experienced internal fitter, such as excessive time taken by him to complete basic fitting work, the approach of the respondent, i.e. the claimant and her line manager Miss Gething supported by Mr Gaskell, was that the fitter needed additional training. Since they recognised that the claimant lacked technical maintenance expertise, Mr Gaskell and Miss Gething therefore did not overly criticise her for the frequent defects in maintenance which caused vehicle under-utilisation and excessive hire costs.

4.15 In February 2023 a new Fleet Administrator was appointed. Whilst this was something the claimant had asked for several months (114-115) and which would ultimately lighten her workload, she needed to spend time training the new administrator. Very sadly, in July 2023 the new Fleet Administrator went into hospital and died suddenly. An agency administrator was swiftly appointed and trained by the claimant and was ultimately retained as Fleet Administrator.

4.16 The claimant felt and was stressed by her heavy workload and the long hours she worked in early 2023, raising this matter with Mr Gaskell in April. There had been a major issue with a late MOT for a vehicle which was failed just before the MOT expired, after the external Mercedes service provider had let the claimant and the respondent down in its service. Despite being marked as off the road, the vehicle was then taken out without a valid MOT which could have put the respondent's Operator Licence at risk. The claimant took this default very seriously and apologised profusely to Mr Gaskell about it. Mr Gaskell he sought to reassure her that she was doing a good job (274) which she took to mean that he was satisfied with her ability to cover all her role and to manage her team.

4.17 On 23 June 2023 at a time when she had been about to email Sarah Gething with multiple concerns, she spoke with Mr Gaskell about the workload pressures she was under, particularly exacerbated by her input into the workshop project. She told him she was struggling with her workload. Mainly on Mr Gaskell's part, this conversation became heated since he was putting pressure on her insisting that the workshop needed to be open soon. He asked her to forward to him the email about her continuing difficulties with the service manager and her workload, which she did (197). Her email included:

“...If he (the Service Manager) fully understood and appreciated (his) responsibility, he would be doing more to mitigate the high drivers hours and constant infringements, emails attached. When I said I don't have his support or back up, these are just a few of the areas of concern as I shouldn't have to be chasing for information or highlighting issues, some of which are serious.

When Jonathan was here saying he that he was not aware I was in a place of having had enough, I didn't bring up our previous discussion, however you were

aware of how I was feeling and I had been giving it time for things to change. It feels like a slippery slope down still with limited view on how to make it better. My personal standards on how I carry out my job role aren't what I want them to be as I am having to split my time on too many things, which means some aspects don't get the time required...".

4.18 For her part, Miss Gething was surprised that the claimant raised these concerns with Mr Gaskell, since she felt the claimant had not raised them directly with herself. The claimant felt she had done so but had not been fully listened to.

4.19 At no time did the claimant have any disciplinary proceedings or performance proceedings taken against her in relation to her role as Fleet Manager or earlier roles.

4.20 Prior to July 2023 (as Mr Gaskell put in his witness statement and Miss Gething firmly confirmed in her oral evidence) the respondent had no immediate intention to appoint a Workshop Manager or foreman. However, events moved very quickly in early July 2023. Mr Gaskell was speaking with an industry colleague on 11 July 2023 about his plans for the business and the fact the new workshop was nearly up and running. His colleague first told him he would find it almost impossible to find someone with the right skillset to fill the position of Workshop Manager; the colleague then remembered someone he knew who was employed elsewhere but might be suitable and interested in a move.

4.21 Mr Gaskell was prompted to look to recruit by his associate telling him of the likely difficulty in doing so. He was expecting the new workshop to be up and running soon and was mindful of the claimant's workload pressures, so Mr Gaskell asked his colleague to contact the individual on his behalf. This resulted in the prospective manager, Raymond Burns, visiting and viewing the respondent's site and meeting Mr Gaskell and Ms Gething after normal working hours on 12 July 2023. Whilst initially this was merely an informal visit, Mr Burns was very interested in the warehouse project. He had vast experience and extensive contacts, was time served and with great knowledge of top class maintenance fitters which impressed Mr Gaskell and Miss Gething greatly. Without a formal recruitment process or formal interview, it was discussed that he be made an offer to join the respondent as the new Workshop Manager.

4.22 At 7.30am on 13 July 2023, Mr Gaskell telephoned the claimant and spoke with her for almost half an hour. He explained his intention to make an offer to appoint a Warehouse Manager he and Ms Gething had just seen. He was very excited and happy at the prospect of making the appointment but was not aware that the claimant was not sharing such enthusiasm. At the end of the conversation, he asked the claimant how she felt about the proposed appointment and she responded that she would need time to think about it.

4.23 Almost immediately thereafter, Ms Gething approached her to ask what Mr Gaskell had said to her and what she felt about it. Again, the claimant said she would need time to think about it.

4.24 The claimant was completely shaken by the conversations with Mr Gaskell and Miss Gething on 13 July 2023. Later that day she telephoned an industry colleague of her own to discuss her position. Despite being under pressure and feeling less supported by Miss Gething in 2023, the claimant had not been looking for employment elsewhere. The colleague she spoke to alerted her to a vacancy at a local transport business. She too moved swiftly since she contacted the business that day and then attended for interview on the following day, 14 July 2024.

4.25 Also on 14 July 2023 the respondent made a formal written conditional offer of employment to the prospective new Workshop Manager, Raymond Burns (R1-2). It set out very basic details of the package of salary and benefits, holiday entitlement, probationary and notice periods and that he would be responsible to Mr Gaskell. The date of commencement was to be confirmed, with hours of work to suit the needs of the business and Mr Burns was told a contract of employment would be issued upon commencement and that there was a company handbook in existence. The salary being offered, to be reviewed in 6 months, was very much higher than the claimant's salary.

4.26 Miss Gething held no full discussion with the claimant and she had to press Miss Gething for her proposed job description before she left to go on her annual leave from 18 July 2023. Ms Gething gave her copies of her own proposed job description and that proposed for the new Workshop Manager. Ms Gething said to the claimant that they would discuss the content of the job descriptions upon the claimant's return from leave. For his part, Mr Gaskell had no further conversation at all with the claimant about her job role and changes entailed by a Service Manager being in post, leaving that to Miss Gething.

4.27 There was no change proposed to the claimant's job title as Fleet Manager nor to her salary. However, the proposed job description she was provided with (145-146) omitted reference to any personnel reporting to her, simply leaving a blank, and the job content was markedly different from her original job description (134-136, 137-140) in particular omitting the bullet points concerning responsibility for the workshop and managing the team of maintenance personnel. The key skill/qualification level was identical on both versions, but the job purpose on the proposed job description had changed slightly from "responsible for managing the day-to-day running of company vehicles including HGV's and plant machinery with an excellent understanding of the legal regulations that surround fleet maintenance and management" to "responsible for managing the day-to-day running of company vehicles with an excellent understanding of the legal regulations that surround fleet management" and the new role stated expressly the Fleet Manager was responsible to the Operations Manager. Whilst it was the respondent's intention that the claimant continued to manage the Fleet Administrator, as the sole employee reporting to her, this was never explained to the claimant.

4.28 In contrast, the proposed job description for the Workshop Manager (149-150) expressly reported to the Managing Director, with maintenance engineers, third party maintenance providers and contractors reporting to him and spelt out the job purpose of being responsible for managing the maintenance of company vehicles with an excellent understanding of the legal regulations that surround fleet maintenance and management.

4.29 The claimant gave a great deal of thought to her position whilst off on annual leave. She felt the proposed job description removed the workshop and team management responsibilities from her and would return her to a much more administrative role on compliance, akin to Fleet Administrator but still with Transport Manager responsibility as named person on the Operator Licence. Before she returned, she prepared a draft letter of resignation on 24 July 2023.

4.30 She returned from annual leave on 25 July 2023 and was surprised to find that the prospective Workshop Manager Mr. Burns was already present and had evidently been in working regularly while she was on her leave.

4.30 On the morning of 25 July, Miss Gething did not approach the claimant to discuss the contents of the proposed job description and enquire whether she had given more thought to the contents and her own position in view of the arrival of the Service Manager.

4.31 Nor did the claimant approach Miss Gething herself to discuss things. Whilst she may still have been persuaded to consider not resigning from the respondent, she took the view that the appointment of Mr. Burns as Workshop Manager had already effectively taken place and decided to go ahead with her resignation.

4.32 Accordingly, she handed her resignation letter to Miss Gething in the middle of the morning on 25 July. Her notice of resignation (129) stated:

“I hereby tender my resignation from my position as Fleet Manager effective 25 August 2023.

There are a number of reasons for this which I'm not going to readdress now, however I was offered an opportunity which I have taken the time to contemplate whilst I have been on annual leave and have made the decision to take on this new role as it will progress my career and take me forward to where I want to be.

I have, in part, come to this decision based on how my role would now be at Gaskells and it is not what I want to be doing nor do I see it as progression, in all honesty I see it as a significant step backwards now that I will not have the same involvement with the vehicles or workshop, in addition to having my team removed from my responsibilities having successfully managed them for a year and a half and bringing us to the completion of the workshop.

After reviewing my new job description, the majority of it I did as fleet administrator bar having my Transport Manager CPC meaning having the responsibility of being named on the Operator Licence. By removing responsibility for any team members, this is effectively demoting me and limits my future career due to lack of management experience of a team.

My decision has been made...”.

4.33 The claimant had a strong sense of responsibility and did not resign with immediate effect because she was the named Transport Manager on the Operator Licence.

4.34 Although the new Workshop Manager formally started employment on 7 August 2023 whilst the claimant was working her notice, he had effectively been working on frequent days by that time and earlier during her annual leave. When she was introduced to him the claimant was told that Mr. Burns would have a lot to learn from her i.e. in relation to the compliance side of her role.

4.35 Whilst the respondent delayed its formal response accepting the claimant's resignation and Miss Gething told the claimant she hoped she would not leave, there were no detailed discussions about the proposed job description or what the claimant's role would have entailed following the appointment of the Workshop Manager.

4.36 The claimant worked her notice period and her employment terminated on 25 August 2023. Prior to that she had provided replies to an exit interview to the HR representative, and she added to the draft when it was returned to her by HR with her replies transcribed (131-133). In her additional comments on seeing the draft, on the question whether the respondent could have done anything different, she replied:

“I would have been open to the discussion of there being a Workshop Foreman (or) for myself to have had overall management of Fleet including the workshop with shared responsibility, not having everything, including my team, stripped away from me thus effectively demoting me to Fleet Administrator...”

4.37 The claimant commenced employment as Compliance Manager with a local transport company on 28 August 2023, pursuant to a formal offer made to her on 18 July 2023 (275). She had accepted the offer of employment on 25 July 2023, after giving her notice of resignation. Her new salary was identical to that with the respondent.

5 The parties' submissions

5.1 The respondent provided and spoke to written submissions urging there was no fundamental breach of contract since the prospect of appointment of a Workshop Manager was not unexpected; the claimant was to remain a senior employee named on the Operator Licence with a Fleet Administrator reporting to her. Miss Gething sought to discuss with her the detail of her job description but after her annual leave the claimant was not prepared to have those discussions. The respondent had a reasonable and proper cause to look to appoint a technically skilled workshop manager to provide effective running of the fleet, reducing the risk of breakdown and unlawful running; hiring such a manager was essential for the business. In any event, if the tribunal found a fundamental breach, the claimant's resignation was not caused by it since she had been offered a job on 18 July 2023; it should conclude that she had been actively looking for a new position for some time. Her resignation letter did not state the respondent was in fundamental breach of contract nor specifically say it was because of the appointment of the Workshop Manager; had it been so, that would have been at the start of the letter.

She said she was resigning due to a number of reasons which she did not want to go into with change of her job role only responsible in part. The tribunal should find the respondent did consult with her about recruiting the Workshop Manager though this was not formally documented. The primary reason for her resigning was that she had been unhappy for several months and had just been offered alternative employment elsewhere.

5.2 The claimant stressed that she had worked with the respondent since March 2014 and been promoted to Fleet Manager with the respondent fully knowing she had no specific technical ability. It had raised no performance concerns with her but was aware she was stressed especially because of the workshop project and new maintenance software. In April 2023, Mr Gaskell told her she was doing a good job and it would be a success. When he telephoned her on 13 July 2023 to explain he had made an offer to a potential Workshop Manager and what that manager would do, this was a major change to her job content removing key responsibilities for maintenance and management of team members. There had been no consultation with her about this and no process followed by the respondent; she even had to request a job description from Miss Gething. When she returned from annual leave, the Workshop Manager position had been offered to and accepted by Mr. Burns who was already working at the premises. During her leave she had reviewed her future role at the respondent against the new job offer. She contended there was a fundamental breach of the implied term of trust and confidence leaving her with no option but to resign, notwithstanding that Miss Gething had told her to go away and look at the job descriptions; she felt there was no opportunity to do so meaningfully when she returned from annual leave with the Workshop Manager already at work in the business. Accordingly, she had been constructively unfairly dismissed.

6 The Law

6.1 To its findings of fact, the Tribunal applied the relevant law on unfair dismissal at part X of the Employment Rights Act 1996. Section 95(1) provides that an employee is (constructively) dismissed by the employer if:

“...(c) the employee terminates the contract under which (she) is employed with or without notice in circumstances in which (she) is entitled to terminate it without notice by reason of the employers conduct.”

6.2 The burden of proving constructive dismissal lay with the claimant. The contractual test was confirmed in the longstanding Court of Appeal authority of Western Excavating (ECC) v Sharp [1978] IRLR 27. To prove constructive dismissal, a claimant may rely upon a breach of an express term of the contract of employment or, as in this case, a breach of the implied term of trust and confidence. It is not material whether the employer subjectively intended any fundamental or repudiatory breach and there is no requirement that an employee must state the precise reason for leaving at the time of resigning, although a failure to do so may make it evidentially more difficult to establish a constructive dismissal.

6.3 Since Western Excavating the higher courts have often considered the law on constructive dismissal in breach of the implied term of trust and confidence cases and have given guidance to first instance tribunals. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833 (CA), at paragraphs 38-41, Underhill LJ cites with approval from the judgment of Dyson LJ in Omilaju v Waltham Forest London BC (CA) [2005] IRLR 35 which itself referred back to earlier authorities such as Western Excavating and Malik v Bank of Credit and Commerce International SA (HL) [1997] IRLR 462. Underhill LJ continued at paragraph 55:

“...In the normal case where an employee claims to have been constructively dismissed 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...
- (5) Did the employee resign in response (or partly in response) to that breach?

None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.”

6.4 The reference to the Malik term is to the implied term of trust and confidence and the principle that it is an implied term of any contract of employment 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.

6.5 Applying the contractual test objectively, in this case there were a number of matters to be determined. Firstly, by the actions or omissions she established, has the claimant proved the respondent did commit a repudiatory or fundamental breach of the implied term of trust and confidence? Did it behave in such a way that, when viewed objectively, was calculated or likely to destroy or seriously damage the trust and confidence between them without having a reasonable and proper cause for those actions or omissions? As the respondent’s representative acknowledged, established case law shows that if she proved a breach of the implied term of trust and confidence which was still active at the point of resignation such a breach would be repudiatory or fundamental.

6.6 Next, did she prove that she resigned in response to that breach (in circumstances where she was entitled to resign without notice). The claimant must show that the repudiatory breach was an effective cause or substantial part of the reason of her notice of resignation on 25 July 2023, although not necessarily the sole cause.

7 Conclusions

7.1 Acts or omissions: what did the respondent do?

It changed the role of the Claimant and removed key responsibilities and status from her, effectively demoting her. In reality the claimant, although retaining responsibility as the Transport Manager named on the Operator Licence, was losing her management responsibility for the workshop and internal and external maintenance personnel. This was a very significant element of her role as Fleet Manager, separate from the named responsibility which went with her compliance and regulation role. Even if (which was not made clear to her in the proposed job description), she continued to manage the Fleet Administrator, there was an obvious reduction in the ambit and status of her role which was not negated merely by maintaining her job title and salary.

7.2 It almost entirely failed to consult with the claimant about the proposed changes and certainly failed to consult meaningfully with her. The substance of the change, in terms of appointing the Workshop Manager, which would remove her responsibility for maintenance and line management for her team of fitters and outside contractors, was announced to her by Mr Gaskell. It was not discussed with her in a way in which she could give input which may have changed the decision to appoint or even the broad structure and demarcation of duties between her and the Workshop Manager going forward. There was no formal meeting with her even by her own line manager Miss Gething to discuss the details of the job description which she had been given before she went on leave.

7.3 Did those acts or omissions breach the implied term of trust and confidence?

The respondent did behave in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. The tribunal does not find that the respondent intended this and even concludes that Mr Gaskell thought the appointment of a Workshop Manager would be to the claimant's benefit by relieving the workload pressure upon her. However, he and Miss Gething took for granted that the claimant would welcome the appointment of a new Workshop Manager. They assumed without full discussion or meaningful consultation with the claimant that she was going to be on board with appointing someone new at full Workshop Manager level despite this removing her from management responsibility for the workshop team and output. Events in July 2023 moved with exceptional speed but were thrust upon the claimant (although she responded quickly in obtaining an alternative offer of employment). As was very clear from Miss Gething's evidence, from a position where Mr Gaskell and she had a future expectation that a workshop specialist was to be employed to lead in the workshop, within a day of the claimant first being told of the actual

possibility of an imminent appointment an offer of employment was made formally and soon accepted by Mr Burns. He was very obviously present in the business when the claimant returned from annual leave on 25 July 2023. Notwithstanding the small team of senior personnel at the respondent and close working practices, there was anything but meaningful conversation with the claimant about significant changes to her contract of employment. The claimant's description, that she returned from leave on 25 July 2023 and found the new Workshop Manager was present (and had been in working during her leave) as a "fait accompli" which consultation over the details of her job description would not have changed, appears accurate. Absent any reasonable and proper cause therefore, the effective demotion and lack of meaningful consultation amounted to a breach of the implied term of trust and confidence.

7.4 Did the respondent have reasonable and proper cause for those actions or omissions?

Clearly there was a sound business reason for appointing a new Workshop Manager. The business was growing and the workshop would enable servicing and maintenance to be done in-house with the prospect of extra business servicing external third party contractors for profit in future. Such an appointment would relieve the workload pressure on the claimant and bring in a highly experienced technical specialist who could engage more effectively with the fitters and contractors working on the fleet of vehicles. However, the respondent had appointed her to the Fleet Manager position just over a year and a half previously, and had told her that she could do the job with support. In the space of a very few days in July 2023, it significantly changed her job content and role without reaching agreement with her about it or even meaningfully consulting with her about the need for the change, areas of responsibility, overlap with or demarcation of roles between hers and that of the new Workshop Manager.

7.5 The alacrity with which Miss Gething approached the claimant on 13 July 2023 to inquire what she thought about the proposal to appoint a Warehouse Manager contrasts sharply with her reluctance to approach the claimant to discuss the job descriptions when the claimant returned to work on 25 July 2023. The tribunal inferred that by that time Miss Gething was not anxious to engage with the claimant about the fine detail of the proposed job description since she knew that the new Workshop Manager had really already taken up his duties. The approach of the respondent to the proposed changes may have been based upon sound or proper business reasons but was in no way reasonable.

7.6 Was the breach a fundamental one?

Yes. The claimant has proved that there was a breach of the implied term of trust and confidence in her contract of employment in terms of the change of job duties and lack of meaningful consultation taken cumulatively (whether or not each of these amounted to a repudiatory breach in itself). This was a very recent and active breach which was indeed fundamental, going to the heart of the contract of employment in terms of the trust and confidence which this senior employee needed to be able to have in her employer.

7.7 Causation: Was this fundamental breach of contract a reason for the claimant's resignation.

The tribunal found that she only sought alternative employment after the conversations with Mr Gaskell and then Miss Gething on 13 July 2023. The repudiatory breach of the respondent remained an effective cause for her resignation notwithstanding the welcome offer of employment elsewhere. To the extent that the offer of new employment was, and was stated in her letter of resignation to be, part of the reason for the claimant resigning when she did, the securing of that offer of employment was triggered by what the respondent told her on 13 July 2023. In short, the tribunal concluded that the claimant would not have sought alternative employment elsewhere when she did had there not been the conversations with first Mr Gaskell and then Miss Gething that day. Set in this context with such close linkage, it is unrealistic to find that the offer of alternative work and the claimant desiring to start with a new employer was therefore the primary reason for her resigning. The respondent's fundamental breach was an effective cause or a reason for her resignation.

7.8 Accordingly, the tribunal concluded that the respondent did seek to impose upon the claimant unilaterally a significant change in her job duties in both her area of responsibility for maintenance of vehicles and management of the internal personnel, contractors and external personnel and it also failed to carry out adequate or meaningful consultation with her about the need for and implementation of those changes and the exact responsibilities the changes entailed. Although the respondent may indeed have had a proper business reason for changing the claimant's job role by bringing in a Workshop Manager, its approach and method of bringing about the change was certainly not reasonable but in breach of the implied term of trust and confidence in the contract of employment.

7.9 In all these circumstances, the claimant has established that she was constructively dismissed. The respondent has not shown a potentially fair reason for such a dismissal and, in any event, did not act reasonably in all the circumstances and bring it about. The claimant was therefore unfairly dismissed.

8. Remedy

Consideration of remedy is adjourned to 17 April 2024.

**Employment Judge Parkin
25 March 2024**

Judgment sent to the parties on:

28 March 2024
For the Tribunal:

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.