



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Ms Anna Tarasiuk

AND

Respondent

Travelodge Hotels Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol

ON

13, 14 and 15 August 2019

EMPLOYMENT JUDGE J Bax

Representation

For the Claimant: Ms Tarasiuk (in person)

For the Respondent: Ms Urquhart (counsel)

JUDGMENT

The claim of constructive unfair dismissal is dismissed.

REASONS

Relevant background

1. The Claimant, Ms Tarasiuk, claims that she has been constructively unfairly dismissed. The Respondent asserts that the Claimant voluntarily resigned and denies that the Claimant terminated her contract of employment by the reason of its conduct. Further it is denied that the Respondent was in breach of that contract or alternatively was in fundamental breach of contract.
2. At a Preliminary Hearing on 5 March 2019, before Employment Judge Vowles, the issues were confirmed as being “The events relied upon as amounting, either individually or cumulatively, to a fundamental breach of contract in response to which the Claimant resigned are summarised in the paragraphs numbered 1 to 6 on the last two pages of the ET1 Particulars of Complaint. The Claimant says that there was a breakdown of mutual trust

and confidence brought about by a series of events and that she resigned in response to a final straw.

The hearing

3. At the start of the hearing discussion the parties confirmed that, on 5 March 2019, it had been agreed that all of the evidence and submissions would be concluded by the end of the second day to leave sufficient time for deliberations, Judgment and remedy if appropriate. It was agreed with the parties that the Judge would read into the case until approximately lunchtime and that the Claimant would be cross-examined for the rest of the first day. The Claimant said that she had 20 questions for Mr Hunter and less for the Respondent's other two witnesses. It was agreed with the parties that the Claimant would cross-examine the Respondent's witnesses until approximately lunchtime on the second day and that closing submissions would be completed by 3 pm enable me to start my deliberations.
4. The Claimant sought permission to play 1.5 hours of covert recordings of meetings she had with Mr Hunter on 6 March 2017 and 10 March 2017. The Respondent was first aware of the recordings that morning. The Claimant wanted to play them on the basis that Mr Hunter's witness statement, which she received in September 2018, had raised further allegations against her. The Claimant said she could not afford the cost of producing a transcript and she did not know that she had them. After taking into account the overriding objective, the application was refused on the basis that the Claimant had the recordings in her possession since they were made and although the process of disclosure was explained to her at the case management hearing she had not informed the Respondent of the existence of the transcripts. Additionally, disclosing and relying upon the recordings at this late stage would mean that the case could not be heard in the time allocated.
5. The Respondent cross-examined the Claimant in accordance with the agreed timetable, after which the Claimant said she wanted to play some of the disclosed 3.5 hours of recordings she had taken. The parties were asked to consider this overnight to see if there could be an agreed position. The hearing resumed at 9.30 am on 14 August 2019 and the Claimant said she wished to play all of the recordings. The Claimant was told that there was insufficient time to listen to all of the recordings and that the issue should have been raised at the start of the previous day, when consideration could have been given to timings or possible adjournment. The Claimant wanted to provide an example of how Mr Hunter had conducted the meetings and it was agreed with the parties that the Claimant would play 12 minutes of the 23 February 2017 recording, the transcript of which was at pages 683 to 690 of the bundle. After the excerpt was played the Claimant confirmed it demonstrated the point that she wished to make.

6. The Respondent then called its evidence. Despite my numerous attempts to assist the Claimant by assisting her to formulate questions and reminding her to ask questions pertinent to her case, rather than generalities, the Claimant repeatedly overran the time estimates that she had given at the start of the hearing and during the course of it. The Claimant was given additional time to ask her questions, although this meant that it was necessary to only have a short, 15-minute break, at lunch time in addition to a comfort break during the morning session. The Claimant was given over an additional hour of cross-examination time, beyond that which had been agreed by the parties at the start of the hearing. It was necessary to impose such limits to ensure that all of the evidence submissions deliberations judgement and possible remedy could be considered within the time allocated as had already been agreed between the parties.
7. When the parties were asked to make their final submissions, the Claimant said that she thought they would be made the following day. The Judge reminded her that from the outset of the hearing it had been agreed that they were to be completed by 3 pm on the second day and that she had been reminded of this throughout the hearing. Closing submissions concluded at 3.33 pm.

The evidence

8. I was provided with witness statements from the Claimant, and for the Respondent from Mr Hunter (Claimant's line manager), David Neal (disciplinary officer) and Gary Steele (appeal officer).
9. I was also provided with an agreed joint bundle of documents of in excess of 800 pages plus a supplementary bundle from the Claimant. Page references in these reasons set out in square brackets are references to pages in the agreed joint bundle. It was explained to the parties before evidence was given that I had read the witness statements and briefly read the documents referred therein and very briefly looked at the transcripts of the covert recordings as referred to in the witness statements.
10. There was a degree of conflict on the evidence. All witnesses gave evidence and I observed their demeanour. In terms of the Claimant she was very forthright and had a tendency to raise her voice. The witnesses for the Respondent were more measured and calmer in their approach.

The facts

11. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

12. The Claimant commenced employment with the Respondent on 19 December 2009. From 18 April 2016 she was employed as a Hotel Manager at the Respondent's Plymouth Roborough Hotel.
13. The Claimant accepted in cross-examination that she knew that taking covert recordings was contrary to the Respondent's Disciplinary policy and that it was potential gross misconduct. She explained she had done this because she thought that staff were being questioned behind her back and she had not believed what had been said about her. She also said that English was her second language, she wanted to ensure she understood Mr Hunter properly.
14. The Claimant suggested that when Mr Hunter started his employment in September 2016, there were no issues with her employer, I do not accept this. On 3 August 2015 the Respondent received a grievance, from Ms Weseman, about the Claimant. On 27 November 2015 the Respondent wrote to the Claimant to confirm that the grievance had been upheld, however no formal action was taken against the Claimant [p149-150]. It also recorded the discussion the Claimant had with Mr Wood on 12 November 2015 about ways in which she could avoid future grievances and maintain fair treatment of her team and that she needed to consider the way her challenges came across to her team members, in terms of tone of voice and body language. The Claimant had said her tone was not abrupt and she felt that there had been a vendetta against her. Mr Wood said that he would work with her to gain feedback from her team and to enable her to understand any areas for improvement as well as receive positive feedback. In cross-examination the Claimant did not agree that the matters in the letter were discussed with her on 12 November 2015 and was unable to recall whether she had actually received the letter. When it was put to her that she had been given the feedback and that she had not responded, she replied "I just forgot about this and I never had any feedback from Daniel and afterwards I forgot I wasn't going to dispute it." It is more likely than not that, the Claimant was sent the letter dated 27 November 2015 and it recorded the conversation that she had with Mr Wood.
15. In late November 2016 the Claimant told Mr Hunter that one of her staff members, Ms Stone, was suffering from an illness that she felt was stopping her from carrying out her role effectively and there had been a referral to Occupational Health. In September or October 2016, during his induction, Mr Hunter had been briefly told about the situation, but the full details were not apparent to him until November. Mr Hunter says that he asked the Claimant to let him know when the report had been received and that he became aware, by way of an email [p165A-165E] from a colleague in Employee Relations ("ER"), that the Claimant had challenged the validity of the report. In cross-examination the Claimant accepted she had sent the

emails to ER, but denied that she had been told to revert to Mr Hunter. Taking into account the evidence as a whole and my assessment of the witnesses, I prefer Mr Hunter's account.

16. On 22 December 2016 Mr Hunter invited the Claimant to attend a structured meeting on 16 January 2017. The purpose of a structured meeting is to update hotel managers about details in relation to the Respondent and also to speak to them about their own personal development. In addition to those meetings there are non-structured visits which are ad hoc.
17. During January 2017, the Claimant told Mr Hunter that she had some performance issues with her number 2, Ms Ryan. Mr Hunter offered to help the Claimant with some hands-off coaching.
18. On about 16 January 2017 the Claimant, Ms Ryan and Mr Hunter had a meeting. At that meeting Mr Hunter felt that the Claimant was very direct with Ms Ryan and was concerned that she raised her voice. He also noted that the Claimant described homosexual people as "people of her (Ms Ryan's) type". The Claimant denied making the comment, but in cross-examination was asked specifically whether it was denied said 'I don't think so I don't recall this at all.' These matters were later raised in a fact-finding meeting on 23 February 2017. I find as a fact that the Claimant did make the remark, but does not recall having done so. After the meeting Mr Hunter says that he gave the Claimant feedback about how she interacted with Ms Ryan. The Claimant disputes that she was given feedback, but accepted that after the meeting Mr Hunter said she raised her voice, which she denied. I find that Mr Hunter gave the feedback in the manner he described and that he said he would continue to support the Claimant in a hands-on way with the performance of Ms Ryan over the next weeks and months.
19. In about February 2017, during an unstructured visit, it was reported to Mr Hunter by Chloe Thompson ("Ms Thompson") that she and her sister, Sarah Thompson, had been told off by the Claimant for coming into work early and sitting in the communal area and had been told that they should sit in the Toby Carvery opposite to wait. Mr Hunter spoke to the Claimant about this, who immediately denied the conversation occurred and said that she was not sure why Ms Thompson had said this because she had a good working relationship with both of them. Mr Hunter suggested to the Claimant that there did not seem to be an issue with the Thompson sisters using the communal area before the shifts and left it to her to speak them to clarify the position. The Claimant said in cross-examination that the allegation was made up, but agreed if a complaint was raised it was right to investigate it, but it should have been questioned whether there was a complaint. When asked whether the Claimant thought Mr Hunter had made up the complaint the Claimant replied it is hard to believe that they (the Thompson sisters) would say something like this. There is no evidence before the Tribunal that

this incident had been invented by Mr Hunter and on the balance of probability Ms Thompson raised the matter with him.

20. On 20 February 2017 Mr Hunter spoke to Ms Thompson, who informed him that the situation had escalated and the Claimant had shouted at her and her sister because the Claimant had got into trouble with Mr Hunter. Mr Hunter took a statement from Ms Thompson, which subsequently went missing. Mr Hunter then decided that he needed to investigate various matters that had been brought to his attention.
21. On 23 February 2017 Mr Hunter held a meeting with the Claimant. The fact-finding meeting record specifies that the reasons for the meeting were that there were several complaints from the Claimant's team about her behaviour and conduct towards them, specifically relating to harassing and bullying them via direct verbal threats and shouting. There was also concern raised about discrimination towards a gay member of staff. Further the Claimant broke Mr Hunter's trust in directly talking to a member of her team after a conversation he requested stayed confidential. Mr Hunter had also witnessed the Claimant's one-to-one with Ms Ryan and given feedback on her style, which he perceived to have been aggressive.
22. The transcript of the meeting, covertly recorded by the Claimant, confirms Mr Hunter said that three employees had told him that they wanted to leave the hotel and work elsewhere. Discussion took place about Ms Stone and the Claimant's challenge of her ability to do the role and of the occupational health report. It was noted that the Claimant said Ms Stone lied to the doctor.
23. The transcript records that Ms Ryan alleged that the Claimant was secretly photographing her. The Claimant said in her witness statement that Mr Hunter had asked her to do this, which he denied. The transcript [p685-686] records that Mr Hunter asked the Claimant why she took such pictures. The Claimant replied, "The only picture I took, I told you". Mr Hunter said, "which was...?" The Claimant replied, "Just the one." Having been played this part of the recording and noting Mr Hunter's surprise it is improbable that he asked the Claimant to take the photograph.
24. Discussion took place about Mr Hunter's observations following the meeting with Ms Ryan on 16 January 2017 and her complaint that the Claimant said that she did not accept her as a gay member of staff and had challenged her around parental rights of her son, which the Claimant categorically denied. The Claimant also denied saying to Melanie that 'Darren said I have the option to fire you if I want. In cross-examination the Claimant agreed that if Mr Hunter had witnessed it, it was reasonable to investigate and accepted that he had told her she was aggressive and raised her voice and she had replied that was just her voice and that she was not aggressive.' On the basis of the transcript, Mr Hunter's version of events is more likely to be correct.

25. Discussion also took place about the matters raised by Ms Thompson. The transcript records that the Claimant said that she asked them whether it was true what they had told Mr Hunter. She then denied that there was a conversation. Mr Hunter told the Claimant that the day before Ms Thompson had telephoned him in tears and begged to be moved from the hotel. The Claimant asked what was going on because it was not true. When Mr Hunter said that Ms Thompson did not want to come back to work and was scared that the Claimant would retaliate, the Claimant responded by saying she did not know what was going on and it seemed to be like a serious intrigue. When asked in cross-examination whether Mr Hunter should have investigated the Claimant replied was, maybe Mr Hunter was lying. The Claimant adduced no evidence to support such an assertion and Mr Hunter's version of events is more likely to be correct.
26. I was referred to Mr Hunter's notes of this meeting [p201A to 201M]. The Claimant said she had never seen these notes until they were disclosed on 6 August 2018. It was accepted by all parties that they did not form part of the subsequent disciplinary hearing bundle. The Claimant also said she was unaware that Mr Hunter was taking a note and suggested that the notes were created for the purpose of these proceedings and pointed out that the time recorded on the notes with her was the same as that on the all team notes. Mr Hunter explained he had re-used the fact-finding record front sheet and had not changed the time. In paragraph 5.5 of the Claimant's witness statement she said that Mr Hunter was typing a lot during the meeting. I also note that the transcript of the meeting broadly corresponds with Mr Hunter's meeting record [p201A-201M] and I accept that he made them during the meeting. No explanation has been given as to why they did not appear in the later disciplinary or appeal bundles.
27. On 23 February 2017, Mr Hunter held a meeting with the following staff: Rebecca Hall, Elivira Razgale, Chloe Thompson, Kerry-Anne Caris and Stacey Ryan. The notes recorded that the Claimant would raise her voice and that various members of staff had problems with the Claimant. Ms Thompson also said that there had been an incident with the Claimant in which she her sister had been locked in a room whilst she asked them deep questions about other staff. Ms Thompson said that the Claimant had also screamed at her for 'not doing a team clean right'.
28. The Claimant criticised Mr Hunter for believing her colleagues over her during the fact-finding process, which Mr Hunter denied. The transcript of the meeting with the Claimant on 23 February 2017 records Mr Hunter saying in response to her asking whether he thought she was capable of doing her job, "...I think you're capable of doing your job, you're capable of being a very good hotel manager, absolutely." The Claimant said she felt

that there was an intrigue or plot against her. Mr Hunter told her that he had a duty of care to her to protect her as one of his team, but also had an equal duty of care to his team if concerns were raised. When discussing the concerns raised by Ms Ryan, Mr Hunter said he was aware that the Claimant was managing Ms Ryan's performance and he would have to take some of what Ms Ryan said as 50-50 and he would have to be cautious, but at the same time he had make sure that the Claimant was managing her correctly. I also take into account that it was not Mr Hunter who made the decision at the disciplinary hearing. It is more probable than not that Mr Hunter was gathering information from all parties and ascertaining their respective positions regarding the incidents alleged. On the balance of probability, he was dealing with the matter in an even-handed manner, was not forming any preconceived views and did not take sides.

29. The Claimant also alleged that Mr Hunter used an intimidating tone of voice towards her and was authoritarian in the meeting and that this was consistent with all of his dealings with her. The extract from the recordings I was played demonstrated that Mr Hunter asked questions in a calm voice, allowed the Claimant to answer those questions and that he was attempting to find answers to the questions that he had. This was consistent with the various transcripts. The Claimant has not directed me towards anything that tends to support her allegation. On the balance of probability Mr Hunter did not conduct the meetings in the manner alleged by the Claimant.
30. On 6 March 2017 the Claimant met Mr Hunter and was informed that he had interviewed all employees, although he corrected himself to say it was 8 out of 13 members of staff, and explained what had been said. Mr Hunter accepted in cross-examination that he had only spoken to the employees present on 23 February 2017. At that meeting the Claimant suggested that a mediation meeting was organised, but Mr Hunter told her that Ms Thompson did not want to meet her, due to a fear of revenge. Mr Hunter told the Claimant that he would treat the matter as an informal warning, but if similar complaints were made were made in the coming months, he would open a formal investigation leading to a disciplinary.
31. On 10 March 2017 a facilitative meeting, between the Claimant, Ms Ryan and Mr Hunter, took place. Mr Hunter spoke to both of them privately and together. During the meeting, Mr Hunter observed the Claimant being dictatorial towards Ms Ryan and when Ms Ryan apologised to the Claimant, she was dismissive of the apology. Mr Hunter said he would support both women and if either had a problem they should contact him and he would take action. After the meeting Mr Hunter was sure that he needed to assist the Claimant with her managerial and behavioural style and to help her develop those skills. Mr Hunter tried to give the Claimant feedback about her choice of words and body language, but this was dismissed by her. Mr Hunter concluded he needed to use some managerial tools to help the

Claimant recognise how she behaved and therefore asked Martine Elliott, HR business partner, to set up some additional training. The Claimant initially refused to complete the Talent Q survey, but ultimately did.

32. On 5 May 2017 Ms Hall sent an e-mail [p242] to Mr Hunter alleging the Claimant had been angry with her regarding a change of her shift, which the Claimant had approved. She also alleged that the weekend before, whilst in reception, the Claimant spoke to her in such a manner that it had her left in tears. Ms Hall said that she constantly felt on edge when she handed over to the Claimant, because she was never sure what mood she would be in. Mr Hunter treated this as a grievance and forwarded the email to ER support, saying that he intended to start a fact-finding process with the Claimant. He also said that due to the history of the two earlier informal grievances he had dealt with, he would be moving the Claimant out of the hotel and placing in a her in the City Centre Hotel for the duration of his investigation. In cross-examination, the Claimant accepted that Mr Hunter was entitled to investigate the allegation. Mr Hunter decided to move the Claimant to the Plymouth City Centre hotel so that he had sufficient opportunity to conduct a full, fair and unbiased investigation and because the Claimant had not adhered to his instructions when he last tried to resolve a situation with her informally. This was not communicated to the Claimant until 11 May 2017.
33. The Claimant said that the Respondent failed to properly investigate this matter under its grievance policy, in that at first it should have been dealt with informally. The grievance policy states that “colleagues should aim to settle grievances informally with their line manager.” It also says that “colleagues should always take reasonable steps to resolve any issues or concerns they have informally with their line manager.” If the complaint is about the employee’s line manager, the grievance should be raised with their line manager’s line manager or a senior manager. The policy is clear that action might take the form of an informal fact find and resolution, mediation or a formal grievance hearing. In the circumstances of this case Ms Hall’s complaint had been about her line manager and there had been previous concerns raised by colleagues about the Claimant. The Respondent was entitled, under the grievance policy, to investigate this matter on a formal basis. The grievance was later upheld. The Claimant asked Mr Neal whether he had seen the letter to Rebecca Hall, dated 19 July 2017, regarding her grievance outcome, he denied this and said he was unaware of it. I accept Mr Neal’s evidence.
34. On 10 May 2017 the Claimant asked Mr Hunter to approve some holiday dates for her between 24 June and 9 July 2017. Mr Hunter replied the same day that he already had four managers off that week, with another waiting for the same time off. The Claimant was told she knew that he had set up a first come first served process and the week was full, with a waiting list. The

Claimant was left on the list pending anyone moving or cancelling their holiday, but was told if they did not, he would not be able to authorise it.

35. On 11 May 2017 there was a fact-finding meeting with the Claimant to discuss Ms Hall's grievance and concerns raised by Gill Stevens and the team on 23 February 2017. The Claimant says that Mr Hunter was sarcastic when he said that he understood meeting would frustrate her. On reviewing the transcript of the covert recording taken by the Claimant and considering the evidence as a whole, it is unlikely that Mr Hunter was sarcastic.
36. Mr Hunter read out the email from Ms Hall and added that she had telephoned him in tears. The Claimant replied "this is very very interesting. My employee recently one by one phone you every time in tears." When asked why it was the third grievance about her since November, she was unable to provide an answer.
37. Discussion took place about the matters raised by Ms Stevens, regarding a receptionist who, whilst on holiday, had suffered two heart attacks and that the Claimant came across at the time as unconvinced that they had caused the black eyes shown in a picture on social media. The Claimant had asked whether she should contact HR because she was not comfortable that this was the case with heart attacks. In the meeting the Claimant said that her concern was that it looked like somebody had beaten her. The Claimant was also told that Ms Stevens had been concerned about her as a colleague. Reference was made to Ms Stone and that in the past that the Claimant had not believed a medical report had been correct and that she had challenged it, the Claimant denied challenging the report. Mr Hunter said that he wanted to understand, in relation to the conversation the Claimant had with Ms Stevens, that her head was in the right place. The Claimant asked whether he was suggesting she had a problem with her mental health which Mr Hunter denied and said that he was trying to help her understand that she had a duty of care for her team, and he gave her credit for having concern, but she needed to understand the correct process so that she did not get herself into trouble. He also said that he was there to support her and he was trying to understand whether or not he needed to give her further support and training. I do not accept that this was evidence of improper conduct by Mr Hunter towards the Claimant, instead it was an attempt to try and understand why she had said what she had and a way of trying to assist her in her managerial duties.
38. Mr Hunter explained to the Claimant that he had been her line manager since September and since then there had been three grievances. He said that the first didn't really get off the ground, the second one they managed to treat as an informal grievance, with some coaching and guidance, and with the third that had come in he hoped she understood that he needed to sit back and look at it. He said he had to think what he needed to do to support

her and what the underlying issue was that needed to be fixed. He said that something was not right and either the whole team were conspiring against her or alternatively there was behaviour that he needed to help the Claimant with. I find that Mr Hunter was even-handed with the Claimant and that he had an open mind as to his investigation.

39. Reference was also made to the grievance raised against the Claimant in 2015 on the basis that it was similar. The Claimant suggests that this was done to intimidate her, however on the balance of probability Mr Hunter believed it was a legitimate line of questioning, given that a similar situation had arisen in a different hotel and that the Claimant was responding in a similar way.
40. Mr Hunter explained to the Claimant that he had to interview Ms Hall and that whilst the investigation was ongoing the Claimant was to work at a different hotel. He explained this was so that he could have a completely unbiased and fair investigation and that she would feel comfortable going into work. The Claimant was told that she was not being suspended. Mr Hunter explained that if her colleagues asked questions as to where she was, he would explain that she was going to support him by going into Plymouth and working alongside Paul. The Respondent also relies upon clause 8 of her contract of employment which states "Your place of work is specified in the Personal Terms. The Company reserves the right to second you to such other locations within reasonable travelling distance as the Company may from time to time require."
41. The Claimant suggests that Mr Hunter had no intention of finding out the truth and that he was happy with what Ms Hall had said. Mr Hunter told the Claimant that he would interview Ms Hall, which he did on 16 May 2017, which contradicts the Claimant's assertion. It is more likely than not that Mr Hunter intended to discover all relevant facts and that he had not pre-formed his conclusion when speaking to the Claimant. The Claimant also suggests that Mr Hunter became increasingly aggressive during the course of the meeting. This is not apparent from the transcripts and the Claimant has not drawn my attention to any particular sections. Considering the evidence as a whole, it is unlikely that Mr Hunter was aggressive towards the Claimant.
42. On two occasions the Claimant said that she wanted to stop the meeting to contact her union representative, but Mr Hunter refused. It can be seen from the transcript that Mr Hunter explained that it was a fact-finding meeting, which was simply a conversation to try and establish what had happened and he pointed out that it was not a disciplinary meeting. This was not a formal grievance or disciplinary meeting, but part of a fact-finding process and the Claimant did not have entitlement to be accompanied by a union representative at this stage.

43. On 12 May 2017 the Claimant raised a grievance against Mr Hunter [p260], stating that she believed she had fulfilled her duties to the top of her abilities. Among other things she complained that, Mr Hunter tried to denigrate her by using diplomatic bullying and clever methods of intimidation by giving her to understand that her behaviour towards the company had been aggressive, detrimental and that she was a threat for Travelodge. She was then off sick from 12 to 26 May 2017. The Respondent says it sent a letter to the Claimant dated 19 May 2017 inviting her to attend a grievance meeting with Mr Steele. The Claimant says that she did not receive the letter and suggests that the Respondent has made it up for the purpose of this hearing. Mr Steele said that he could not explain this, but had drafted it and arranged for it to be sent. There is no evidence to suggest that the letter was created for the purposes of these proceedings. On the balance of probability, Mr Steele arranged for it to be sent, but the Claimant did not receive it. In any event, the Claimant withdrew her grievance on 24 July 2017.
44. On 16 May 2017 Ms Thompson informed Mr Hunter she was planning to leave the business due to her relationship with the Claimant. She informed him that the day after she had messaged Mr Hunter about being sick, she was in reception when the Claimant had had a go at her for contacting Mr Hunter. When asked why she contacted Mr Hunter and not the Claimant first about being sick, she said she thought it was the best way because on a couple of previous occasions the Claimant had a go at her when she had called in sick. She also said that it was a nice little team, but she did not want to keep being treated like rubbish anymore.
45. On 16 May 2017 Mr Hunter also carried out a fact-finding meeting with Rebecca Hall, who confirmed that she wanted to proceed down the formal route. She referred to an incident where the Claimant had said to her 'if I was a horrible boss, I would be putting disciplinary action questioning if you were asleep on the job as a guest had been waiting to get into the building.' Ms Hall explained that she was in the linen room, cleaning the room ready for the morning and that was why the guest was waiting. When asked if she may have misinterpreted the Claimant's meaning she replied 'no it's genuinely very clear, you can tell she's pissed off or angry. She looks at me like I'm an idiot and her tone of voice changes and uses angry body language, it's like I'm going to get told off.' She also said that she hated working at the hotel and was panicking every time the Claimant worked in the mornings. Ms Hall cried and said she did not know why the Claimant was like that towards her. She also said that she did not want the Claimant to lose her job, but she is not very people person. On 19 July 2019 Ms Hall's grievance was upheld. Ms Hall was informed that the Claimant would attend a People Management Skills Induction course and will be given the opportunity of further behaviour coaching and that a facilitated 1-2-1 would be conducted between the two of them by Mr Hunter. The Claimant cross-examined Mr Hunter on the basis that the minutes [p268 to 270] were not produced on the Travelodge pro

former fact-finding sheet. Mr Hunter explained that he had poor handwriting and therefore typed the notes straight into his laptop. I note that Ms Hall had signed the notes. I accept Mr Hunter's evidence and find that the notes are an accurate record of the meeting.

46. On 26 May 2017 the Claimant provided a sick note for 2 weeks in relation to neck pain. On 30 May 2017 Martine Elliott, HR business partner, spoke to the Claimant acknowledging receipt of her grievance. On 12 June 2017 the Claimant had a long meeting with Ms Elliott at which she discussed her concerns about Mr Hunter and after which she felt much better. On 24 July 2017 the Claimant emailed Ms Elliott and said 'after second thoughts and careful consideration I would like to declare that I do not wish my email to be considered as a formal grievance against Darren. I do not wish to pursue this issue any further.'
47. On 10 July 2017 the Claimant returned to work and found that her e-mail box credentials had been changed and she could not access her manager Google account. Ms Stevens had received approval to use the e-mail box, which was where the Claimant had kept the correspondence regarding her issues. The email address in question is plymouthrobor.mgr@travelodge.co.uk and was the official email address for the manager of the Roborough hotel.
48. The Claimant had a one-to-one meeting with Mr Hunter on the same day. She did not question Mr Hunter about this meeting. She was updated as to the position and that another District Manager would conduct a disciplinary hearing regarding Ms Hall's grievance. Mr Hunter said that he needed to spend time coaching and supporting her due to the past grievances raised. On considering the evidence Mr Hunter did not act in an intimidating manner.
49. By way of a letter dated 13 July 2017, Mr Hunter invited the Claimant to attend a disciplinary meeting on 21 July 2017 [p301 to 304] in relation allegations of failing to demonstrate the leadership behaviours and/or management practice required. The letter explained that the hearing would be conducted by David Neal (District Manager for Somerset), and included documents to be relied upon. The Claimant said she did not receive this letter and that it had been emailed to an email address she had not used for some time. The Claimant accepted that she had received the documentation before the disciplinary hearing and that she and her union representative had been able to properly consider it.
50. On 18 July 2017 the Claimant was signed off sick for pain in her neck and a stress related problem. The disciplinary hearing was eventually rescheduled for 25 August 2017.

51. The Claimant, in her witness statement, referred to a return to work interview with Mr Hunter on 17 August 2017, this was not pleaded and Mr Hunter was not questioned about it. She said that he told her that because she was signed off work with work-related stress, he needed to identify what was triggering it and how it can be prevented in the future. He said that he needed to find out what kind of support she needed from him and how they could move forward with their relationship. The Claimant says that he had some form of obsession of offering her coaching, support and care that she felt like she was being hounded and harassed. He also explained why he wanted her to complete the Talent Q survey and that after completing it she would have a meeting with Ms Elliott and that they would have all the tools to help her improve her management traits. He also said that they could offer courses or maybe she would only need some coaching sessions from him. Although none of this was put to Mr Hunter, on the balance of probability, taking into account the nature of the transcripts of other meetings, Mr Hunter was trying to provide a supportive and encouraging environment for the Claimant.
52. The disciplinary hearing was held on 25 August 2017. The Claimant said in cross-examination that she had no issue with the procedure followed, although she questioned Mr Neal regarding some aspects of the procedure followed at the hearing. When I queried this, she said that what she didn't have objection to, was the manner in which the meeting was conducted. Mr Neal confirmed that the only thing he had spoken to Mr Hunter about, was whether he was available to hear a disciplinary hearing and nothing about the subject matter and I accept this evidence. Neither Mr Neal nor the Claimant were aware that fact-finding minutes of the meeting with the Claimant on 23 February 2017 existed at the time of the disciplinary hearing, or when the decision was taken. The Claimant says she was first aware of the minutes on 6 August 2018 and therefore although in hindsight the Claimant says this made the process unfair, on the balance of probability it could not have been in her mind at the time she resigned on 27 November 2017.
53. Both parties agree that the disciplinary hearing was lengthy. I find on the basis of the notes [p329 to 346] that the Claimant had the opportunity, which she took, to provide her version of events in which she denied that the conduct alleged against her had occurred and suggested someone had created it. At one point Mr Neal said to the Claimant 'you're actually quite passionate in this meeting, do you think it could be interpreted as anger?' The Claimant replied, 'I don't think so.'
54. Mr Neal confirmed in cross-examination that neither party had referred to additional witnesses and therefore there was no one else he could have spoken as part of any possible further enquiry. He agreed that the Claimant had shown him 'catch-up' documents detailing discussions between her and

Ms Thomson and Ms Hall, which he had read during the hearing. He believed that at the hearing, he had all of the information necessary to make a decision. He did not further investigate whether false allegations had been made because the incidents alleged involved 2 parties and there were no witnesses and he therefore had to use the information he had to make a decision. When questioned about the earlier grievance raised in 2015, he said it did not relate to the matter he was considering and he had no information about it. He also confirmed that he did not ask questions about Ms Stone because he was not considering issues involving her but matters involving Ms Hall and Ms Thompson. He also agreed that he would not discuss Rebecca Hall's alleged complaint made at the fact-finding meeting on 23 February 2017. In his evidence he denied that there was confusion in the evidence. He was also questioned whether a disciplinary hearing should have been based on a formal grievance or an informal meeting and he said that the decision whether to escalate a matter to a disciplinary hearing was based on fact finding. The Claimant also raised that a minute taker should have been present for the fact-finding meetings, Mr Neal said that the Company procedure did not require this. I accept Mr Neal's evidence.

55. At the end of the meeting Mr Neal explained that he would have to go back to the information and the notes in order to make an informed decision, but also told the Claimant that he did not feel it was a dismissal or a gross misconduct situation, in order to put her at her ease.
56. When the Claimant received the hearing notes, she said she had many objections, including that what she had said been misinterpreted and she amended notes [p347 to 366] to the Respondent on 31 August 2017. I considered the corrections to the notes and they do not change the substance of what was originally recorded. In cross examination Mr Neal confirmed he had received the amended notes, but said he had already made his decision by that stage. This is consistent with his witness statement at paragraph 81 in which he says he made the decision 2 to 3 days after the hearing, i.e. before the Claimant sent her corrections to the notes. I accept Mr Neal' evidence on this point. Further the Claimant was unaware of when Mr Neal actually made his decision at the time of her resignation. On the balance of probability this could not have formed part of her decision to resign. In any event, considering that the amendments do not change the substance of the notes, I find on the balance of probability that Mr Neal's decision would have remained the same.
57. On 29 August 2017 the Claimant completed the Talent Q Dimensions assessment.
58. On 4 September 2017 the Claimant was sent the outcome of the disciplinary hearing. The allegation was upheld and she was issued with a first written warning, to last for 9 months. It was found that the Claimant had raised her

voice to Rebecca Hall and Chloe Thompson and had been perceived as aggressive in her approach.

59. In his witness statement, Mr Neal, says that he considered the information provided to him and that he took into account the Claimant's aggressive and confrontational tone throughout the disciplinary hearing. The Claimant challenged Mr Neal in relation to paragraph 20 of his witness statement, in which he said "I remember the disciplinary meeting vividly because of the Claimant's behaviour during the disciplinary meeting. Unfortunately the Claimant was very argumentative and challenging during the disciplinary meeting. I even remember her trade union representative having to tell her to stop talking and allow myself to speak on numerous occasions." The Claimant asked why he had said 'unfortunately she was argumentative and challenging' and he responded, 'because it was the way you were coming across and the way you were being in that meeting.' In the meeting notes [p336/354] Mr Neal said to the Claimant 'you're actually quite passionate in this meeting, do you think it could be interpreted as anger?' The Claimant replied 'I don't think so...' Taking into account the manner in which the Claimant conducted herself during the hearing before me and the notes made during the disciplinary hearing, it is very likely that the Claimant's behaviour at the disciplinary meeting was in the manner described by Mr Neal and that he formed such an opinion at that meeting.
60. Mr Neal formed the view that the Claimant was not aware of her behaviour and conduct towards her fellow employees and also considered that it was adaptable and could be changed through the help or intervention by means of training, courses and mentoring. The length of warning was reduced from 12 months to 9 months on the basis that the Claimant's actions were not a risk to the business and they be worked upon with support. I accept this evidence.
61. On 7 September 2017 the Claimant realised she had been underpaid £500; this was resolved within a week.
62. By way of a letter dated 8 September 2017, the Claimant appealed against the disciplinary decision. She stated the allegations against her were false and denied that there was any evidence of her failing to demonstrate the leadership behaviours and management practice required by the Company. She suggested that Mr Hunter had not been fair and objective in his investigation.
63. On 12 September 2017 the Claimant emailed Thomas Heier, head of HR, and asked for a meeting. He replied the following day [p401] and advised her to continue with her appeal and said that she was valued as a manager.

64. On 14 September 2017 Ms Hall resigned from her employment with the Respondent [p536] and said that she did not feel comfortable working with the Claimant and as a result had decided to leave. In cross examination Mr Hunter said that the letter had been personally handed to him. I accept Mr Hunter's evidence and that the letter at page 536 was the letter he was given by Ms Hall.
65. On 21 September 2017 a facilitation meeting, via Mr Hunter, took place between the Claimant and Ms Ryan. The notes signed by all parties are at pages 403 to 406. The notes record that Ms Ryan said, "before you were going off Anna it felt like you were cutting my hours to get rid of me." There was then a remark attributed to the Claimant that "maybe Mel should consider moving to another hotel.' Mr Hunter says that tended to show that the Claimant was being aggressive and showed a lack of empathy or compassion towards Ms Ryan. The Claimant, in her witness statement, said she suggested that it may be good for Ms Ryan to consider a transfer if she could permanently get more hours. On 22 September 2017 Ms Ryan e-mailed Mr Hunter [p409] and said she was appalled that the Claimant had responded by saying "If you feel like that have you thought of transferring to a different hotel.". Ms Ryan said that this had upset her and felt that she needed to start reviewing her working future. Mr Hunter's evidence is consistent with Ms Ryan's e-mail and the notes and I prefer his evidence to that of the Claimant.
66. The Claimant says in her witness statement that Mr Hunter was inappropriate and humiliated her at the meeting. At 2106 on 21 September 2017 the Claimant sent Mr Hunter a text message [p667] in which she said "hi Darren. I just want to thank you for today's meeting with Mel. I must admit that it was the first time I felt really supported by you. Thank you for your feedback much appreciated. Have a good evening. See you on Tuesday." I do not accept the Claimant's evidence. On the balance of probability Mr Hunter conducted the meeting appropriately and that he did not humiliate the Claimant.
67. The Claimant returned to the Roborough Hotel on 23 September 2017. Miss Stevens had been using the title of 'Holding Manager' on hotel documentation during the Claimant's absence.
68. On 25 September 2017 the Claimant was invited to attend a disciplinary appeal meeting on 3 October 2017.
69. On 1 October 2017 Ms Thompson e-mailed Mr Hunter stating she was resigning [p426]. She also said that she did not feel comfortable working with the Claimant anymore as she felt like she was walking on eggshells. The Claimant suggests that this e-mail had been doctored because the e-mail she was forwarded by Ms Thompson on 3 October 2017 [p458] did not

include the passage about not feeling comfortable working with the Claimant. The email forwarded to the Claimant postdates the resignation sent to Mr Hunter. On the balance of probability Ms Thompson sent the e-mail on page 426 to Mr Hunter and on 3 October she edited it, before forwarding the e-mail to the Claimant. On the balance of probability Mr Hunter did not alter the email he was sent.

70. On 3 October 2017 the appeal meeting was conducted by Regional Director Gary Steel, which the Claimant says lasted five hours. Mr Steele had been lined up to deal with her grievance, before she withdrew it. Mr Steele was not challenged about this in cross examination and the Claimant did not raise it as an issue at any stage during her employment or the appeal process. Further in the appeal notes [p432] the Claimant said that she was not saying the disciplinary hearing was unfair but that it was the process leading up to it. In the circumstances I am not satisfied, on the balance of probability, that it was improper for Mr Steele to conduct the meeting. In any event, taking into account that the Claimant did not receive the letter inviting her to a grievance meeting, it is highly unlikely that this was in the Claimant's mind at the time of her resignation. During the meeting the Claimant said that it was really difficult for her to believe that Chloe Thompson had issues against her. It is likely that the Claimant had a full opportunity to raise all of the issues she had in relation to her appeal.
71. On 10 October 2017 Jason Munn resigned from the Respondent and said that "since Anna came back a lot of unnecessary drama and tension has resurfaced which has made me dread going to work. So that is why I have handed in my notice..." [p461].
72. Mr Steele sent the Claimant a letter dated 23 October 2017 [p465-468] informing her of the outcome of the appeal and that the original decision was upheld. In relation to her first point, that the fact-finding process that led to her first written warning was handled unfairly, he said that all the meetings were held in line with the process, however it was acknowledged by the appeal panel that the records had not been signed immediately after the meeting. The meeting notes were recorded directly into Mr Hunter's laptop and all parties were asked to read and verify the notes at that stage. He recognised that it is best practice that meeting notes are signed, but said the Respondent was still within its rights to use the meeting notes as evidence. In the same section Mr Steele said that the disciplinary manager had dismissed the collective fact-finding meeting record from February 2017 and he was questioned about this. Mr Steele said that there was a collective team fact-finding exercise and that his recollection was that they only took into account the allegations from those who'd actually made statements. This reference initially troubled me, however on balance Mr Steele was not saying that the whole document was dismissed, but only those parts that related to other people who had not given evidence in that meeting. It is also apparent

from the disciplinary and appeal hearing notes and Mr Neal's evidence that the statement of Ms Thompson made on 23 February 2017 was taken into account at all stages. I accept Mr Steele's evidence and not all evidence given on 23 February 2017 was discounted.

73. In relation to the second point of appeal, that the Claimant believed the disciplinary process followed was unfair, Mr Steele stated that the Claimant said that it was only the process leading up to the disciplinary hearing and not the disciplinary hearing itself that was unfair. Mr Steele said that in future fact-finding meetings must all be conducted on the meeting record templates, that he believed that the disciplinary process followed in this case was consistent with Travelodge practice and did not result in unfair treatment. I am satisfied that the records of those meetings were accurately recorded by Mr Hunter.
74. The third point of appeal was that, the Claimant believed the allegations made were false and malicious and that there was no evidence against her. Mr Steele set out the documents he had considered. In addition, he took into account that the Respondent was in receipt of signed resignations from team members (this was discussed in the appeal meeting) which tended to support his reasonable belief that the allegations were not false. It is likely that the resignations reinforced Mr Steele's view.
75. The Claimant's fourth appeal point was that there was no evidence of support and the use of any informal procedure i.e. 1-2-1s, coaching or training. Mr Steele said Mr Hunter had supported the Claimant and her team informally and that he had seen evidence of Mr Hunter coaching and supporting the Claimant when he visited the hotel in February 2017. In cross-examination, Mr Steele said that he was with the Claimant and Mr Hunter when they discussed the issues that she had with Ms Ryan and that Mr Hunter had raised said they would support her and that she should let him help her. I accept that Mr Steele did not witness Mr Hunter coaching the Claimant, but he did witness Mr Hunter making suggestions and trying to seek ways to support and help the Claimant in dealing with the situation. Mr Steele also said that the Claimant had completed the Talent Q personality questionnaire which would help her to understand her behaviours and identify development areas. It can be seen in the transcripts and the records of meetings between the Claimant and Mr Hunter that he often said that he was looking for ways to support her and that he was trying to help her. Further there is evidence of facilitative meetings between the Claimant and Ms Ryan. The Claimant also had support from Ms Elliott which she found helpful. On the balance of probability, the Claimant was provided with support and assistance during the relevant times.
76. On 25 October 2017 Mr Hunter received an email [p483] from Ms Hall stating that the Claimant had telephoned her about a reference request and that the

Claimant suggested that Ms Hall was the reason why she was being fired. Ms Hall then asked whether she would be giving her reference and the Claimant replied that she did not know. Ms Hall sent a further email on 26 October 2017 [p483] saying that she was angry and shocked that the Claimant 'felt it was okay to call her and accuse her of getting her sacked.' Ms Hall said the Claimant "thinks she has done nothing wrong and has shown herself for the bully she is by calling and telling me that she doesn't want to give her a reference for her new job."

77. On 30 October 2017 Mr Hunter held a fact-finding meeting with the Claimant, regarding the email from Ms Hall. The Claimant said that she did call her to confirm whether she wanted her to be her referee and could not see that she had done anything wrong. She denied telling her that she was losing her job or using the word bully. Mr Hunter explained to the Claimant that there was a process that covered references and that all reference requests should be sent to the People Department, which the Claimant acknowledged she knew about (as set out in the transcript at p746). Mr Hunter explained that he was undertaking a fact-finding exercise because Ms Hall had raised a grievance against the Claimant and then left the business, citing the Claimant as a reason, and that the Claimant had then telephoned her. Mr Hunter explained that it was inappropriate for the Claimant to call Ms Hall, even though she was a former employee. On the balance of probability, the procedure did not prevent Mr Hunter making these enquiries, on the basis that it was a complaint about a telephone call made by the Claimant in the course of her employment.
78. On 31 October 2017 the Claimant had a feedback meeting, following the appeal outcome, with Ms Elliott and Mr Steele. The Claimant says that Mr Steele said again that employees had complained of her behaviour, how she spoke, the tone of her voice and the words she used. The Claimant says Mr Steele had nothing new to say and his feedback was based on his opinion. She was also told that recently three members of staff had resigned and said that they could not work with her any longer. The Claimant suggests that they both tried to intimidate and overpower her. The notes [p484c] record that Mr Steele said he saw evidence of how Mr Hunter had supported her and that he arranged a mediation meeting in March. He said that the Claimant 'ran a good hotel, but it was her body language and tone and she needed to recognise how she may come across.' The notes do not suggest that Mr Steele and Ms Elliott were being intimidating they tend to show that they were trying to support the Claimant and help her learn what had happened in order to be a better manager. Ms Elliott and Mr Steele, on the balance of probability, were not being intimidating and the meeting was undertaken to support and assist the Claimant.
79. On 9 November 2017 Mr Hunter received a telephone call [p504A-K] from Ms Thompson alleging that on 25 October 2017 the Claimant had

telephoned her and asked whether her grievance was true, to which she had replied 'yes'. It was alleged that the Claimant then said, 'if it is not true, I can take you to court because I'm looking at losing my job.' Ms Hall told Mr Hunter that she would like to work for the Respondent again, but not work with the Claimant. In cross examination Mr Hunter said he had used a fact-finding sheet on this occasion because it was available and a good way of him recording the details of the telephone conversation. I accept Mr Hunter's evidence and that it is an accurate record of the conversation.

80. On 10 November 2017 Mr Hunter held a fact-finding meeting with the Claimant in relation to the matter raised by Ms Thompson [p505-509]. Mr Hunter read to the Claimant his record of the telephone conversation with Ms Hall. The Claimant told him that Ms Thompson had sent a text message to her on 18 October 2017 [p172] that read "hello Anna I hope you're well I was just messaging to see if it would be possible to come back to Travelodge as I miss you all so much and working for Travelodge too." The Claimant also said she had spoken to Jason Munn, on her return from holiday, and he explained that he had resigned and she had not been told of the reason. Mr Hunter said that Mr Munn, Ms Thompson and Ms Hall had all said that they had left the business because of the Claimant. At the end of the meeting Mr Hunter asked the Claimant if there was anything else that she wanted him to consider before he spoke to Ms Thompson again.
81. On 13/11/2017 Mr Hunter emailed Ms Elliott in relation to an incident on 13 November 2017 [p509A]. Ms Stevens had reported that the Claimant's partner had been behind the counter in reception and had been looking in folders. The Claimant told Mr Hunter that it was ridiculous. Mr Hunter said he appreciated that the Claimant might be becoming frustrated with the situation and he had spoken to her about ensuring that she gave the team no reason to question her decisions and actions and by doing so would hopefully stop all of the situations occurring. He said that he thought they needed to review the direction they took and that they agreed an aligned approach to supporting the Claimant and her team, whilst looking to address her behaviour traits in order to make it tenable. On balance Mr Hunter was continuing to try and support the Claimant in her role. The Claimant was cross-examined about the incident and accepted if her partner had gone behind the counter it was forbidden and was potential gross misconduct. It was suggested that the Claimant had this in mind when she resigned, which she denied. On the balance of probability, it is unlikely that this was in her mind when she resigned.
82. On 22 November 2017 the Claimant wrote a report [p517-518] about an incident that occurred the night before. At about 0220 a guest reported an incident involving the night receptionist and the guest was asked to make a written statement. A short time later the guest and another person were shouting in the car park to passers-by about the incident and the Claimant

asked them to quieten down. 10 minutes later a Mr Ryder came to reception and angrily confronted the Claimant. Mr Ryder said that if the Claimant did not remove the night receptionist, he would contact head office and then she would be at risk.

83. On 24 November 2017 Amy Ashley, of Employee Relations, emailed Mr Hunter [p523A] about a complaint received from Mr Ryder about the incident involving the night receptionist and he alleged that the Claimant had been rude, aggressive and abusive. In cross examination it was suggested to the Claimant that she knew that she had been rude and abusive to Mr Ryder and that this was a reason why she had resigned; she denied this. The Claimant did not know that this e-mail had been sent at the time of her resignation and it is unlikely this was a factor in her resignation.
84. On 27 November 2017 the Claimant sent a letter of resignation [p524].
85. On the basis of the evidence as a whole, including my observations of the witnesses and the documents referred to, I reject the Claimant's evidence that Mr Hunter behaved in an oppressive and/or intimidating fashion towards at any of the meetings. On the balance of probability Mr Hunter, at all relevant times, acted in an appropriate and supportive manner towards the Claimant.
86. It became apparent during cross examination of the Claimant that at some point towards the end of her employment she photocopied documents from Ms Ryan's personnel file and taken them home. It was suggested to her that could be a breach of data protection and that under the Respondent's disciplinary policy it was potentially gross misconduct. The Claimant agreed she was not allowed to copy things on personnel files, but said that there were special circumstances in that she felt at risk that she was either going to be demoted or dismissed. It was unclear how Melanie Ryan's personnel records would have assisted the Claimant in this respect. She accepted it was potentially gross misconduct and that she might have been disciplined for that matter.
87. It also became apparent during cross examination that the Claimant had initially engaged Rebecca Hall as a volunteer for a month and had given her hours so she could get used to the job. It was clarified that Rebecca Hall was not paid for this work. The Claimant said she was not aware that she was not allowed to let her work for free and at the time should not see anything wrong with it. It was suggested to her that this could have been a matter of gross misconduct.

The Law

88. Under section 95(1)(c) of the Employment Rights Act 1996 (“the Act”), an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.
89. If the Claimant’s resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides “... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case”.
90. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer’s conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”
91. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors [2011] EWCA Civ 131, Maurice Kay LJ endorsed the following legal test at paragraph 20: “... whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract.”
92. In Courtaulds Northern Spinning Ltd v Sibson [1987] ICR 329, it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from Nottingham City Council v Meikle [2005] ICR 1, Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07 and Wright v North Ayrshire Council [2014] IRLR 4, that the crucial question is whether the repudiatory breach “played a part in the dismissal” and was

“an” effective cause of resignation, rather than being “the” effective cause. It need not be the predominant, principal, major or main cause for the resignation.

93. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA at paragraph 14:

“The following basic propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer’s actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761.

2. 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: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as “the implied term of trust and confidence”.

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: “impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer”.

94. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury’s Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair.”

95. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney

[2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the Claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).

96. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the “last straw” doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer’s acts notwithstanding a prior affirmation by the employee.
97. In addition, it is clear from Leeds Dental Team v Rose [2014] IRLR 8, that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727, that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.

Conclusions

98. The term alleged to have been breached is the implied term of trust and confidence. The Claimant says the last straw was the fact-finding meetings on 30 October and 10 November 2017.
99. After speaking to the Claimant on 15 February 2017, Mr Hunter decided to deal with the matter informally. He had reasonable and proper cause to do this, on the basis of the low level of the complaint and that he genuinely believed it was an appropriate solution at that time.
100. When Mr Hunter had received a further complaint from Ms Thompson that the situation had escalated, he had further reasonable cause to have spoken to the Claimant about it on 23 February 2017 and then to have made further enquiries. I have taken into account that the Claimant was Ms Thompson’s line manager, the informal approach had not worked and the situation had become worse. Further, the Claimant accepted in cross-examination that, if concerns are raised by an employee, an employer should investigate them.

101. One of the criticisms made by the Claimant is that she was not believed about these matters and she suggested that she should not have been required to undertake a fact-finding meeting with Mr Hunter on the basis of the information he had been given. The Claimant explained in her closing submissions, that the reason why she says that there was no evidence against her is that it was one person's word against another and that there was not an independent witness. The information provided by Ms Thompson was evidence. The Claimant held an erroneous belief that unless there was a supporting witness there was no evidence against her. Mr Hunter had obtained evidence of potential misconduct by the Claimant and that he acted with reasonable and proper cause by investigating the allegations.
102. Mr Hunter had a good reason, therefore, to have given the Claimant an informal warning on 6 March 2017, in relation to the matters discussed on 23 February 2017 and to warn the Claimant that, if similar complaints were made, he would have to open a formal investigation.
103. Mr Hunter's refusal to approve the Claimant's proposed holiday dates in June and July 2017 was in line with the process he had previously established and was not unreasonable and/or in breach of the implied term.
104. Given that Mr Hunter had received further complaints about the Claimant, it was reasonable for him, on 11 May 2017, to hold a fact-finding meeting with her and ascertain her version of events. It was entirely appropriate for him to ask the Claimant about what had occurred in Barnstaple on the basis that the allegation, involving a different person, was similar to the complaint he was investigating. I do not accept that it was unreasonable for Mr Hunter to refuse to stop the meeting so that the Claimant could contact her union representative. The meeting was not a formal hearing at which a grievance or disciplinary allegation would be determined, but was part of the investigation process only into the allegations made against her. It is noted that it was never suggested that the allegations could amount to potential gross misconduct. I also find that Mr Hunter had reasonable and proper cause for temporarily requiring the Claimant to work at a different hotel. This enabled Mr Hunter to have a fair investigation by being able to speak to the Claimant's colleagues in a less pressured environment, gave all concerned breathing space and avoided having to consider suspending the Claimant. In any event the Claimant's contract of employment permitted the Respondent to require her to work elsewhere, therefore this cannot be a breach of contract.
105. The Claimant alleges that Ms Hall's grievance should have been dealt with on an informal basis. Ms Hall wanted to proceed on a formal basis and the Grievance Policy is clear that informal resolution between colleagues is an aim, but if that is not possible it should be raised formally with a manager. Ms Hall could not be compelled to deal with the matter informally and

therefore Mr Hunter acted with reasonable and proper cause by proceeding on a formal basis.

106. In the light of my findings of fact about the meeting on 10 July 2017 there was reasonable and proper cause to hold it and Mr Hunter behaved appropriately.
107. In relation to the disciplinary meeting on 25 August 2017, Mr Neal reasonably considered that he did not need to undertake any further investigations. I take into account that no further witnesses were identified by the Claimant that could have led to further investigations, the allegations were one word against another and were of a minor nature. The Claimant complains that the paperwork was 'all over the place' at the disciplinary hearing, however she was provided with all of the documentation and had a full opportunity to discuss it. It was clear that the allegations Mr Neal was considering related to Ms Hall and Ms Thompson and he was considering their statements. The Claimant says that there was no evidence against her, but as I have already found this is based on an erroneous belief. The information provided by Ms Hall and Ms Thompson is also evidence and Mr Neal was entitled to and acted reasonably in taking it into account when reaching his decision. Mr Neal also reasonably took into account the way in which the Claimant had conducted herself during that hearing, as that tended to support the allegations against her. I find that Mr Neal acted reasonably, taking into account the information that he had and the low level of seriousness of the allegations, when reaching his decision and that this was reflected in the sanction. The Claimant has failed to prove that Mr Neal acted without reasonable and proper cause.
108. In relation to the appeal on 3 October 2017, I found that, although the Respondent accepted that the way in which the fact-finding notes were recorded was not best practice, the information contained in them was accurate. Having accepted Mr Steele's evidence in relation to the reference to 'the fact-finding meeting being dismissed', I do not accept the Claimant's submission that there was no basis on which to find against her. At both the disciplinary and appeal hearings aspects of the fact-finding meeting of 23 February were discussed and the Claimant provided her account. I find that by proceeding with the appeal Mr Steele acted with reasonable and proper cause and the process was not unfair. I find that Mr Steele's decision on this appeal point was reasonable and the Claimant has failed to prove it was without reasonable or proper cause.
109. In relation to the Claimant's third appeal point, that the allegations were false and there was no evidence against her, the Claimant says that Mr Steele's conclusion was not backed up with facts and it was just opinion. I find that this argument stemmed from the Claimant's erroneous belief that for something to be proved there must be an independent witness. When

conducting an appeal or a disciplinary hearing the person conducting that hearing will consider the evidence before them and form their conclusions as to what has or has not happened. The Claimant at no stage has suggested there were any other witnesses that could be spoken to. Mr Steele made his decision on the basis evidence that had been provided to him, including the accounts of Ms Hall and Ms Thompson and what happened in the disciplinary hearing.

110. The Claimant says that the resignations discussed during the appeal were not involved in the grievances made about her and she is correct in that respect. That information did not exist at the time of the disciplinary hearing. The resignations were fully discussed with Claimant at the appeal. It was reasonable for the Respondent to take this into account given that it was new information that might shed light on whether the allegations had been proven. I take into account that if the Claimant had not been mentioned in the resignation that might have been evidence that supported the Claimant's version of events. I do not accept that they were used for any other purpose than for assisting with the matters raised in the appeal and it is clear that they were not being used as fresh allegations against the Claimant. In the circumstances Mr Steele had reasonable and proper cause in referring to the resignations in the light of the Claimant's ground of appeal.
111. Mr Steele was entitled to reach the conclusion which he did on the evidence before him. He did not act in breach of the implied term.
112. Mr Hunter had reasonable and proper cause to hold the fact-finding meeting on 30 October 2017. The Claimant says that it should not have occurred, on the basis that Ms Hall was no longer an employee. This was a complaint about something the Claimant had done in the course of her employment I therefore find that it was reasonable and appropriate for Mr Hunter to question the Claimant about it.
113. The feedback meeting on 31 October 2017 with Mr Steele supports my conclusion that the Respondent at all times was looking to support the Claimant and assist her in her management style.
114. Mr Hunter had reasonable and proper cause to hold the fact-finding meeting on 10 November 2017, on the basis that he had received resignation letters alleging that the reasons for the employees' departures were due to the Claimant's conduct during the course of her employment. The Claimant complains that she was being oppressed and that this meeting and the meeting on 30 October 2017 was the final straw leading to her resignation. I find that enquiry was undertaken to ensure that the Claimant was managing employees in an appropriate fashion. There is no evidence in the notes that Mr Hunter was oppressive in doing so. I found that at no stage did Mr Hunter

act in an oppressive, intimidating or humiliating manner towards the Claimant

Was the Respondent in fundamental breach of contract?

By failing to act swiftly and diligently to protect the Claimant's rights not to be subjected to ongoing harassment and intimidation in the workplace by not conducting a facilitating meeting between the Claimant and the parties allegedly making accusations in order to clarify the issues raised and to try and reach a mutually satisfactory agreement this could avoid possible escalation of the situation.

115. The Respondent had a duty to investigate complaints raised by the Claimant's colleagues and did so in a fair and even-handed manner. I found that Mr Hunter was not oppressive or intimidating and that in respect of each of the fact-finding enquiries he had reasonable and proper cause to conduct them. The Claimant says that there should have been facilitation meetings, it is apparent that a facilitation meeting was arranged with Melanie Ryan, however other employees did not want to be involved. The decisions taken by the Respondent in this respect were reasonable and the Claimant has failed to establish that the Respondent's actions were without reasonable and proper cause. The issues in this case stemmed from the Claimant's refusal to accept how she might be perceived by other people. In the circumstances, the Respondent was not in breach of contract in this respect.

By failing to take into account the effect on the health and safety of the Claimant of the campaign of harassment being experienced by her.

116. The Claimant has failed to prove that the Respondent failed to take into account her health and safety. The Respondent has a duty of care not only to the Claimant but also to her colleagues and was therefore required to investigate the complaints made about her. It is also clear that Mr Hunter and Ms Elliott attempted to provide support to the Claimant. Further Mr Hunter took the decision that it was unnecessary to suspend the Claimant whilst he investigated the matters and instead, he arranged for her to work in a different hotel, under the pretext that she was helping him while somebody was on leave. In the circumstances, Respondent was not in breach of contract in this respect.

By failing to take seriously anything the Claimant said in defence of accusations and also failed to obtain favourable statement from other staff on behalf of the Claimant.

117. The Respondent was faced with allegations of one word against another and spoke to the parties concerned as part of the investigation. The Claimant is under the erroneous belief that unless there is an independent witness an allegation cannot be proved. Further there is evidence from Mr Hunter that he would return to witnesses, for example to Ms Thompson, in order to clarify matters. I have accepted that Mr Neal and Mr Steele fairly and properly considered the evidence before them. The Claimant did not suggest any other witnesses that should have been spoken to at the fact-finding, disciplinary, appeal stages or at this hearing. Accordingly, there was no further reasonable investigation that the Respondent could have undertaken. The length of the disciplinary and appeal hearings demonstrates that the Respondent properly considered the allegations and it is noted that the Claimant had no objection to the way in which those hearings had been conducted. The Claimant has failed to prove that the Respondent failed to take favourable statements from other staff. I am not satisfied that the Respondent did not take what the Claimant said seriously. Accordingly, the Claimant has failed to establish that the Respondent was in breach of contract in this respect

By failing to ensure that the fundamental part of disciplinary procedures took place and were fairly and promptly concluded

118. The Claimant was provided with the investigation notes relied upon at the disciplinary hearing. She disputes that the fact-finding was carried out in accordance with the procedures, however I have found that the documents in which the evidence is recorded were accurate and any departure from the process is not fundamental. Further she had an opportunity to consider that evidence and was able to provide full responses at the disciplinary and appeal hearings. Further she was informed of her right to be accompanied and that she had a right to appeal. I do not find that the Respondent has failed in a fundamental way in relation to these procedures and therefore the Claimant has not established a breach of contract in this respect.

By failing to protect the Claimant from hostile work environment and excessive stress in the workplace

119. I dismiss this allegation of breach of contract for the same reasons as set out in relation to the allegation that the Respondent failed to take into account the effect of the health and safety of the Claimant.

By failing to take into consideration whether or not the accusations were genuine which the Claimant questioned from the very beginning.

120. The Claimant maintains that the allegations against her were false and I accept that she genuinely believes that. However, the Respondent fairly investigated the allegations made against her and spoke to all of those

concerned. This was an issue that was considered at the disciplinary and appeal hearings and Mr Neal and Mr Steele considered all of the evidence and what the Claimant had to say about the case, including that the matters alleged had not occurred. I therefore find that there was not a failure to take into consideration whether or not the allegations were genuine.

Did the Respondent have reasonable and proper cause for the way it acted?

121. I have found that the Respondent had reasonable and proper cause for conducting the investigation and bringing the disciplinary and appeal proceedings, the way in which they were conducted and for undertaking further fact finding exercises in October and November 2017 and that Mr Hunter behaved appropriately towards the Claimant at all times. Accordingly, the Respondent acted with reasonable and proper cause throughout the relevant time.

Was such conduct calculated or likely to destroy or seriously damage the trust and confidence the Claimant had in the Respondent?

122. On the basis that the Respondent had reasonable grounds on which to investigate the complaints against the Claimant and my findings in relation to its conduct throughout in terms of the way in which meetings had been conducted and the process followed, the Claimant has failed to establish that the conduct was likely to destroy or seriously damage the trust and confidence she had in the Respondent. Further she relied upon a last straw, namely the fact-finding meetings in October and November 2017. I have found that Mr Hunter had reasonable and proper cause to investigate the further complaints that he had received and that he did so in an appropriate manner. I find that the Respondent's actions at these meetings were entirely proper and appropriate and they cannot be said to fall within the test of a last straw.

123. Therefore, the Respondent was not in breach of the implied term of trust and confidence and accordingly the Respondent was not in fundamental breach of contract.

Did the Claimant resign in response to a fundamental breach?

124. The Claimant resigned on the basis that she was being questioned about matters relating to her conduct. However, I find that it was not in response to a fundamental breach of contract by the Respondent.

Did the Claimant wait too long to resign?

125. I do not need to consider this question on the basis that the Respondent was not in fundamental breach of contract. In the event that the fact-finding

meetings in October and November 2017 had met the test of a final straw I would have found that the Claimant did not delay too long.

Conclusion

126. The Claimant has failed to prove that the Respondent acted in fundamental breach of contract and that she resigned in response to such a breach. Accordingly, her claim of constructive unfair dismissal is dismissed.

Employment Judge Bax
Dated 10 September 2019