EMPLOYMENT TRIBUNALS

Claimant: **Mr J. Chapman**

Respondent: **Stephensons of Essex Limited**

Heard at: **East London Hearing Centre (in public, by CVP)**

On: **25 May and 19 June 2023**

Before: **Employment Judge Massarella**

Representation
Claimant: In person
Respondent: Mrs Kaur-Singh (litigation executive)

JUDGMENT

The judgment of the Tribunal is that: -

1. **the Claimant's claim of unfair (constructive) dismissal is not well-founded and is dismissed.**

REASONS

1. Oral judgment having been given at the hearing, the following written reasons are provided in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 at the Claimant's request, made at the end of the hearing.

Procedural history

2. The claim form was presented on 15 January 2023 after an ACAS early conciliation period between 8 and 10 January 2023. It is a claim of unfair (constructive) dismissal only.

The hearing

3. I had a bundle of documents running to 141 pages. The parties provided a small number of additional documents during the hearing.

4. I heard evidence from the Claimant, who also referred me to written statements from Mr Crooke, Mr Petchey and Mr Salbo, who did not attend to give evidence.

5. On behalf of the Respondent, I heard from Mr Dean Robbie (General Manager) and Mr Bill Hiron (Managing Director).

6. The issues for determination were as follows.

   6.1. Was the Claimant dismissed? Did the Respondent do the following things:

      6.1.1. breach the Claimant's data in 2019, when Mr Matt Willis disclosed the Claimant's self-certification form to another employee;

      6.1.2. fail to place the Claimant on furlough in early April 2020, even though his partner was a cancer patient and high-risk;

      6.1.3. refuse the Claimant's request to be put on full furlough, made on 26 January 2021;

      6.1.4. did a manager, Mr Simon Crump, visit the Claimant's home during a period of sickness absence in September 2022 to check his car to see if had been driving, as the Respondent suspected he was working nights as a lorry driver;

      6.1.5. the Claimant's SSP was stopped on 14 December 2022;

      6.1.6. the outcome of the Claimant's grievance of 25 November 2022;

      6.1.7. the conduct of the appeal meeting, which was rude;

      6.1.8. the decision-maker, Mr Martin Massey, was not an appropriate person to make the decision because he was not sufficiently senior.

      Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

      6.1.9. whether the Respondent behaved in a way which, viewed objectively, was likely to destroy or seriously damage the trust and confidence between employer and employee; and

      6.1.10. whether the Respondent had reasonable and proper cause for doing so.

   6.2. If so, did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

   6.3. Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that he chose to keep the contract alive even after the breach.

6.4. If the Claimant was dismissed, what was the reason or principal reason for dismissal, i.e. what was the reason for the breach of contract?

6.5. Was it a potentially fair reason?

6.6. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

7. I was unable to complete my deliberations on the first day of the hearing and listed a further half-day to give oral judgment and determine remedy, if appropriate.

Findings of fact

8. The Respondent is a privately owned bus company based in Rochford, Essex. It operates local bus services throughout Essex and West Suffolk. The employees of the Respondent were key workers during the Covid-19 pandemic.

9. The Claimant was employed by the Respondent as a bus driver between 18 August 2014 and 6 January 2023, when he resigned.

10. He relies on a series of acts or omissions by the Respondent between 2019 and 2023 as amounting to a cumulative breach of the implied term of trust and confidence, in response to which he resigned.

11. The Respondent denies that there was such a breach; if there was, it denies that the Claimant resigned in response to it; if he did, it asserts that he waited too long before doing so and thereby affirmed the contract.

12. I will deal with each of the alleged elements of the cumulative breach in turn.

<u>The data breach in 2019</u>

13. The first matter the Claimant relies on is a breach of his data in 2019, when a colleague, Mr Matt Willis showed a WhatsApp photos of the Claimant's self-certification sickness form to another employee (Mr Salvo) without the Claimant's consent. This occurred in the context of a discussion about the Claimant's wellbeing and his likely return to work, in particular how long other drivers would have to cover the Claimant's school run. Mr Willis mentioned the the Claimant had sent a self-certification form. Mr Salvo (as he confirmed in his statement for the Tribunal) queried this said: 'I said that I thought you could only get a self-certificate from the workplace as that was what I was told by an old doctor's surgery'. Mr Willis then showed Mr Salvo the form on his phone.

14. By letter dated 10 October 2019, the Respondent upheld the Claimant's complaint about a data breach. The Respondent put training in place for supervisors and managers to reduce the risk of a recurrence of the problem.

15. The Claimant's complaint was also upheld by the ICO in an email of 15 January 2020. The ICO told the Claimant about his ability to bring a claim for compensation and explained that he would need to 'pursue this independently through the courts or with an industry's own ombudsman or regulatory body'. The Claimant did not do so, he explained, because Covid intervened and after a while he decided to put it behind him.

The furlough issue

16. The second matter is the way that the Claimant was dealt with at the beginning of the March 2020 lockdown.

17. On 24 March 2020, Mr Hiron (the Respondent's managing director) wrote to employees explaining the furlough scheme and asking them to say, preferably within 12 hours, whether they wished to be considered for furlough.

18. On 25 March 2020, the Claimant emailed conditional, rather than definite, interest as follows:

> 'In principle I would be interested depending how much we are going to get paid.'

He did not mention any circumstances relating to his partner.

19. On 27 March 2020 the Claimant emailed asking when Mr Hiron was going to notify employees as to who would be furloughed. Mr Robbie replied that all those who were going to receive a letter should have had it earlier that evening. Mr Chapman wrote a reply, which appears to be somewhat joking in tone, asking if he should feel:

> 'special or actually tucked up that I am still working and everybody else sitting at home on the same money as me and I am working and in fact they would be on more money.'

20. On 1 April 2020, the Claimant wrote to Mr Robbie saying that he would still like to be considered for furlough as his partner was 'in the high-risk category'. He did not say why that was in this email, nor in his subsequent email of 14 April 2020. Not until his email of 20 April 2020 did the Claimant mention that his partner was a cancer patient.

21. I accept Mr Robbie's evidence that the Respondent did not proactively ask employees to provide supporting medical evidence, but that those who had it provided it. Although I am not doubting the truthfulness of the information the Claimant gave me about his partner, he did not provide any supporting documentation to the Respondent at any point in 2020. The Claimant's evidence was that he was sure he and his partner had provided more information at the time, but they could not find the email. At the last possible moment in the hearing, I was provided with an email to the Respondent, from January 2021, asking that the Claimant be furloughed because of her circumstances and confirming that she had been furloughed since March 2020 and then on full-time leave from October 2020 because her employers didn't feel they could keep her safe as she was currently undergoing cancer treatment.

22. I find that no equivalent email was sent to the Respondent before then, i.e. during the initial lockdown period from late March 2020 onwards.

23. I accept the evidence that by 20 April 2020, the Respondent had made its decisions about who should be furloughed and who should not. It had as many employees as it could on the scheme. It provided a vital service to the local community, particularly in providing transportation to members of the public who

needed to travel to medical appointments or shop for essentials; it needed a minimum level of staffing to provide that service.

24. The Claimant continued to work for the rest of 2020 without raising any further complaint about the matter.

Furlough requests in January 2021

25. On 4 January 2021, the Government announced another national lockdown. The Respondent implemented the flexi-furlough scheme. The Claimant emailed the Respondent on 26 January 2021 explaining why he was asking to be furloughed by reference to his partner's situation.

26. The Claimant initially suggested that there was a further failure to deal with him appropriately at this stage in January 2021, but during the hearing he decided not to pursue the point and acknowledged that Mr Robbie had dealt with him fairly.

SSP

27. The Claimant also initially suggested that he had not been paid the full amount of SSP to which he was entitled during a period of sickness absence in 2022, but he also withdrew that allegation in the course of the hearing.

Mr Crump

28. The Claimant then alleges that Mr Simon Crump, an employee of the Respondent, who is a former police officer, visited the Claimant's home during a period when the Claimant was on sickness absence in September 2022.

29. Both parties agreed that Mr Crump had delivered a notice about a job vacancy by hand to the Claimant's home the previous month, in August 2022, on Mr Robbie's instruction. The Claimant does not complain about that. He says that Mr Crump paid him a second visit the following month with another person.

30. The Claimant says that they came in a company vehicle that was unmarked. He said that the person driving the vehicle was not Mr Crump but someone else who had a distinguishing tattoo on his neck, which he described as 'like a tribal tattoo'. He says that Mr Crump entered his property, walked down the driveway, stood at the front of his car with his hands on the bonnet to see if it was warm. Mr Crump then stood at the front of the house, looking up the windows. He then left and went and sat back in the car. The Claimant believed that Mr Crump paid this visit to his property to see if had been driving, as rumours were going round that he was working nights as a lorry driver. The Claimant had heard as much from colleagues, whom he declined to identify because he did not want to involve them.

31. Mr Crump was not called to give evidence about this incident at the Tribunal hearing. The explanation offered was that the Respondent considered that it would have been disproportionate to call him, given that the hearing was only listed for one day. I found that explanation unsatisfactory: the Respondent was professionally represented; Mr Crump's evidence was obviously relevant; if it felt that one day was insufficient, an application could have been made for a longer listing.

32. The Claimant complained to Mr Robbie in an email of 18 September 2022. He described Mr Crump attending his property. He said that he knew that there were rumours going round that he was driving lorries at night, which he said were not true. He described the incident as 'suggesting that I am committing fraud which is a deformation [*defamation*] of my character'. The Claimant wrote:

> 'If you sanctioned this I'm very disappointed in you as you know it's wrong. If you didn't then maybe you can explain why your traffic accident manager is doing this as he is not a compliance manager and he certainly isn't a police officer any more.'

33. On the balance of probabilities, I accept the Claimant's account of the incident. I found him to be a generally truthful witness. He gave the account on a number of occasions, by email to Mr Robbie, in his grievance and at the grievance hearing. It was consistent throughout. It was not put to him that he made the allegation up; indeed, he was barely cross-examined on this incident by Ms Kaur-Singh. No reason was suggested why he would want to do so.

34. I also accept his explanation that he regarded this unwanted visit as an implicit accusation of dishonesty, even fraud, the implication being that he was accepting SSP while working elsewhere. No other explanation for the visit was advanced by the Respondent. This was not a trivial matter.

35. However, I also accept Mr Robbie's evidence to me today that he did not instruct Mr Crump to go to the Claimant's house in September for this or any other reason. I note that, in answer to my questions, Mr Robbie was clear that, if the incident happened for the reasons the Claimant believed, he would have regarded it as misconduct on Mr Crump's part. Further, he accepted that any person in the Claimant's position would be entitled to feel aggrieved by an intrusion of this sort, precisely because of the trust issue.

36. Although Mr Crump was a member of management at the time, his role was Safe Driving Manager. It was not his job to carry out investigations of this sort into fellow employees. Indeed, this was one of the things the Claimant complained about in the email I have quoted above.

37. Doing the best I can on the evidence before me, I think it is likely that Mr Crump made this visit to the Claimant's home on his own initiative, prompted by rumours that were going around that the Claimant might be moonlighting as a lorry driver while purporting to be unwell. It was a serious error of judgment on his part.

38. Mr Crump denied the allegation at the time. In the circumstances, I think that is unsurprising.

<u>The grievances</u>

39. In his email of 18 September, the Claimant described this incident as the 'last straw' and said that, depending on the Respondent's response, he would have no alternative but to 'take further advice first port of call will be ACAS'. He chased Mr Robbie for an update on 30 September 2022, saying that he had been in touch with ACAS about his concerns 'especially Simon Crump's unofficial visit'.

40. Later the same day, Mr Robbie emailed the Claimant and asked when the incident took place. The Claimant replied the same day saying he thought it was around 15/16 September, although he could not be exact about the date. Mr Robbie said he would investigate. He spoke to Mr Crump who categorically denied making any such visit. Mr Robbie looked into the company vehicle that Mr Crump was driving which was marked. He enquired as to whether there were any unmarked vehicles and discovered that there was only one.

41. The Claimant chased Mr Robbie on 14 October 2022. On 17 October 2022, Mr Robbie rejected his complaint, saying that he had found 'no evidence Mr Crump has been anywhere near your house since he dropped off the notice at my request back in August this year'.

The Claimant's grievance

42. The Claimant lodged a grievance on 21 October 2022 about three issues: the data breach in 2019; the handling of furlough; and the Crump incident. He concluded his letter: 'Please let me assure you that I won't be dropping this. I will take it all the way and certainly will be involving the press […]'.

43. The grievance meeting took place on 31 October 2022. The grievance was conducted by Ms Amanda Stevens. The Claimant has no complaint about the way that she conducted the interview with him.

44. In the course of her investigation Ms Stevens spoke to the following people: Mr Matt Willis; Mr Dean Robbie; Mr Bill Hiron; Mr Simon Crump.

45. She conducted a careful investigation. When she spoke to Mr Crump he was adamant that he had only attended the Claimant's property in August and not in September. She discovered that Mr Crump's vehicle was branded and had been since beginning of the year. Only one employee (Mr Andrew Collins) had an unbranded vehicle. Mr Robbie was not aware of an employee with a tattoo of the kind described by the Claimant.

46. An outcome report was finalised on 18 November 2022. Ms Stevens upheld the first point of the grievance and concluded that a data breach did take place. She did not uphold the Claimant's grievance in relation to the furlough matter or the allegation that Mr Crump had attended the Claimant's home.

The grievance appeal

47. The Claimant appealed against the outcome. The appeal hearing took place on 9 December 2022. It was conducted by Ms Paula Teasdale of Peninsula. The Claimant said that she conducted it in a rude manner. I have read the transcript of the hearing and I disagree. On the contrary, it appears to me that the Claimant was frustrated with the questions which were bring asked and became somewhat combative and uncooperative in answering them. He spoke for by far the majority of the hearing, mostly uninterrupted. In the event, he terminated the hearing before its conclusion, saying 'that's another 45 minutes my life wasted talking about the same thing'.

The grievance appeal outcome letter

48. The Claimant relies on the fact that the letter dismissing his grievance appeal, which appears to have triggered his resignation, was part of the breach of the implied term because it came from Mr Massey, who was too junior to take the decision. The situation is as follows.

49. Ms Teasdale recommended that the grievance should not be upheld. Her report went to Mr Hiron. He reviewed her report and accepted her recommendation. However, he was about to go on holiday over the whole of the Christmas period and asked a more junior colleague, Mr Massey, to send out the letter on his behalf, which he did. The letter is clearly pp'd on Mr Hiron's behalf by Mr Massey; Mr Massey was not the decision-maker. Unfortunately, it did not go out until 4 January 2023, which was later than Mr Hiron had anticipated.

The Claimant's resignation

50. The Claimant resigned on 6 January 2023. The Respondent wrote to him on 9 January 2023 asking him to reconsider his decision. The Claimant replied on 10 January 2023, saying that his decision stood. The Respondent paid to him all outstanding monies.

The law

51. S.94 of the Employment Right Act 1996 ('ERA') provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by his employer. S.95(1) ERA provides that he 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 ('a constructive dismissal').

52. If there is a constructive dismissal, s.98(1) ERA provides that it is for the employer to show that it was for one of the permissible reasons in s.98(2) ERA, or some other substantial reason. If it was, s.98(4) ERA requires the Tribunal to determine whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee.

53. The employee must show that there has been a repudiatory breach of contract by the employer: a breach so serious that he was entitled to regard himself as discharged from his obligations under the contract.

54. The Claimant relies on a cumulative breach of the implied term of trust and confidence. The applicable principles were reviewed by the Court of Appeal in *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 (at [14] onwards):

> **'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) Ltd 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, 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 (emphasis added).**
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> **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" (emphasis added).**
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> **5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para [480] in Harvey on Industrial Relations and Employment Law:**
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> > **"[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship."**
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> **The last straw principle has been explained in a number of cases, perhaps most clearly in *Lewis v Motorworld Garages Ltd* [1986] ICR 157. Neill LJ said (p 167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p 169F:**
>
> > **"(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term? (See *Woods v W. M. Car Services (Peterborough) Ltd.* [1981] ICR 666.) This is the "last straw" situation."**
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> **Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "*de minimis non curat lex*") is of general application.**'

55. In determining whether there has been a breach of the implied term, the question is not whether the employee has subjectively lost confidence in the employer but whether, viewed objectively, the employer's conduct was likely to destroy, or seriously damage, the trust and confidence which an employee is entitled to have in his employer: *Nottinghamshire County Council v Meikle* [2005] 1 ICR 1 (at [29]).

56. It is important to apply both limbs of the test. Conduct which is likely to destroy/seriously damage trust and confidence is not in breach of contract if there is 'reasonable and proper cause' for it: *Hilton v Shiner Ltd Builders Merchants* [2001] IRLR 727 (at [22- 23]).

57. In *Hilton International Hotels (UK) Ltd v Protopapa* [1990] IRLR 316, the EAT held that, for there to be a constructive dismissal, it must be by reason of something which the law regards as the conduct of the employer. Whether the repudiatory conduct of a supervisory employee binds the employer is governed by the general law of contract. The general principle is that the employer is bound by acts done in the course of the employee's employment. Therefore, if the supervisor is doing that which he or she is employed to do and, in the course of doing it, behaves in a way which, if done by the employer, would constitute a fundamental breach of the contract between the employer and an employee, then the employer is bound by the supervisor's misdeeds.

58. The employee must not delay his resignation too long or do anything else which indicates affirmation of the contract: *W.E. Cox Toner (International) Ltd. v Crook* [1981] ICR 823 (at 828-829). What matters is whether, in all the circumstances, the employee's conduct shows an intention to continue in employment, generally by continuing to work: *Chindove v William Morrison Supermarket plc*, UKEAT/0201/13 at [25-26].

Conclusions

59. I will now give my conclusions in relation to each of the elements of the alleged breach of the implied term.

60. Two matters fall away because the Claimant decided not to rely on them: the handling of the furlough request in January 2021; and the handling of statutory sick pay in 2022.

61. As to the matters which the Claimant did rely on, I have reached the following conclusions.

<u>The data breach</u>

62. I am not satisfied that the data breach, although regrettable, was sufficient in itself, viewed objectively, seriously to damage the relationship trust and confidence. It was a single, relatively minor, incident, which appears to have been a moment of thoughtlessness. The Respondent acknowledged it was wrong and put in place training for supervisors and managers in GDPR. It was plainly a wrong and I am satisfied that it might contribute to a cumulative breach, taken together with another matter, provided it is a matter for which the Respondent is liable.

63. The Claimant's ongoing sense of grievance about the matter appears to have been the fact that the Respondent did not financially compensate him for the incident (in his ET1 he complains that 'I was due compensation'). However, he did not bring a claim for compensation, as he was advised that he could by the ICO. There was no obligation on the Respondent to make a voluntary payment to him.

64. If I am wrong, and it was a breach of the implied term, on the Claimant's own account, he decided to put the matter behind him and continued to work for the Respondent. I consider that, by doing that, he waived the breach and affirmed the contract.

<u>The furlough issue in April 2020</u>

65. For the reasons given above, I have concluded that the Respondent had reasonable and proper cause for not offering the Claimant furlough in April 2020. Consequently, this cannot be an element of a breach of the implied term of trust and confidence. The Respondent might have handled the Claimant's request more sensitively, but that is not sufficient, in my judgment, seriously to damage the relationship of trust and confidence.

The grievance outcome

66. In my judgment, and for the reasons I have given, I have concluded that Ms Stevens had reasonable and proper cause for not upholding the Claimant's complaints in relation to the furlough matter.

67. As for her conclusion about Mr Crump's visit, although Ms Stevens reached a different conclusion from the one I have reached, I consider that it was a conclusion which was open to her on the evidence before her. She had spoken to Mr Crump, who had strongly denied attending the Claimant's property; she had found no corroborating evidence to support the Claimant's account; I am not satisfied that, viewed objectively, her decision not to uphold the complaint was conduct which was likely seriously to damage the relationship of trust and confidence.

The grievance appeal

68. The conduct relied on by the Claimant did not occur as alleged: Ms Teasdale did not conduct the hearing in a rude manner. Consequently, this element of the alleged breach of the implied term falls away.

The grievance appeal outcome letter

69. The same applies to the Claimant's complaint that Mr Massey was too junior to take decision to dismiss his grievance appeal: Mr Massey did not do so; Mr Hiron, who was sufficiently senior, took the decision. Mr Massey merely sent out the letter on Mr Hiron's behalf.

The Crump incident

70. That leaves the incident of Mr Crump visiting the Claimant's house itself.

71. This was a single incident. Mr Crump did not seek to interact with the Claimant. There was no overt hostility on his part. On the other hand, the very fact that Mr Crump did not notify the Claimant of his visit, before or after it, is itself an aggravating factor. The Claimant, reasonably in my view, considered that his honesty was being questioned by Mr Crump's actions and that he was being spied on by him.

72. However, a crucial question arises at this point: should Mr Crump's actions be treated as the Respondent's actions for these purposes?

73. In the case of *Hilton International Hotels v Proptopapa* [1990] IRLR 316, the Employment Appeal Tribunal held that for there to be a constructive dismissal, it has to be by reason of something which the law regards as the conduct of the employer. Whether the repudiatory conduct of a supervisory employee binds the employer is governed by the general law of contract. The general principle is that the employer is bound by acts done in the course of the employee's

employment. Therefore, if the supervisor is doing that which he or he is employed to do, and in the course of doing it behaves in a way which, if done by the employer, would constitute a fundamental breach of the contract between the employer and an employee, then the employer is bound by the supervisor's misdeeds.

74. I have already found that Mr Crump was acting outside the role which he was employed to carry out. Nor was he instructed to make the visit by Mr Robbie. He made the visit on his own initiative.

75. I note that, in answer to my questions, Mr Robbie spontaneously agreed that, if the incident happened for the reasons the Claimant believed, he would have regarded it as misconduct on Mr Crump's part. He accepted that any person in the Claimant's position would be entitled to feel aggrieved by an intrusion of this sort, precisely because of the trust issue. That is consistent with my view that Mr Crump was acting beyond the remit of his role.

76. After careful consideration, I have concluded that the Respondent is not liable for the actions of Mr Crump on that occasion. Mr Crump was acting outside the scope of his job role; he was not doing something which he was employed to do. In visiting the Claimant's home as he did and carrying out his investigations, he was not acting in the course of his employment; he was acting improperly on his own initiative. Mr Crump's conduct was not the conduct of the Respondent and there was no breach of the implied term by the employer.

77. Having reached the conclusion that the Respondent is not liable for Mr Crump's actions on that day, there was no breach of the implied term of trust and confidence by the Respondent and the Claimant's claim of constructive unfair dismissal must fail.

78. I record that I have very considerable sympathy for the Claimant. Mr Crump's actions were highly reprehensible and the Claimant was entitled to feel aggrieved.

Employment Judge Massarella

10 July 2023