Employment and Discrimination Tribunal

Form ET3

Case No ED033/19

THE EMPLOYMENT & DISCRIMINATION TRIBUNAL

Applicant: MISS SOPHIE STREETER
Represented by: Self-represented

Respondent: SANDPIPER C.I. LIMITED
Represented by: Mr. S. Forrester (Managing Director)

Tribunal Members: Crown Advocate J. Hill (Chair)
Mr. R. Brookfield
Mr D. Etasse

Hearing date: 7 and 8 October 2020

Decision of the Tribunal

The Applicant made a complaint of constructive unfair dismissal.

Having considered all the evidence presented, whether referred to in this judgment or not, the representations of both parties and with due regard to all the circumstances, the Tribunal finds that, under the provisions of *The Employment Protection (Guernsey) Law, 1998*, as amended, the Applicant resigned from her employment in circumstances that did not give rise to constructive dismissal. In the circumstances, the Applicant's claim is dismissed. The Tribunal made no order for costs.

J Hill — 20 October 2020

…….. ……
Crown Advocate J Hill — Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH.

FORM: ET3A ED033/19

The legislation referred to in this document is as follows:
The Employment Protection (Guernsey) Law, 1998, as amended ('the Law')
The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005
The Employment Protection (Recoverable Costs) Order, 2006

The authorities referred to in this document are as follows:
Cotterill v States of Guernsey (Guernsey Royal Court, Judgment 58/2017)
Reynard v Fox [2018] EWHC 443 (Ch)
Western Excavating (ECC) Ltd v Sharp [1978] QB 761
Spafax Ltd v Harrison [1980] IRLR 442
Malik v Bank of Credit and Commerce International SA [1997] IRLR 462
British Aircraft Corpn v Austin [1978] IRLR 332
Palmanor Ltd v Cedron [1978] IRLR 303
Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493
Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978
Lewis v Motorworld Garages Ltd [1985] IRLR 465
Chindove v William Morrison Supermarkets Ltd UKEAT/0201/13 (26 June 2014, unreported)
G W Stephens & Son v Fish [1989] ICR 324
Appelqvist v States of Guernsey (Guernsey E&DT, ED008/10)
Allen v CarpetRight plc (Guernsey E&DT, ED002/13)

Extended Reasons

1.0 Introduction

1.1 Throughout these extended reasons documents within the hearing bundle shall be referred to like this: "**[*x*;*y*]**", which means "volume ***x***; page ***y***".

1.2 The Applicant, who it was agreed was employed by the Respondent from 15 April 2015 to 28 June 2019, latterly as a multi-site operations manager, complains that she was constructively unfairly dismissed. The Respondent denies that the Applicant was dismissed; they allege that she resigned with notice by email and attached letter dated 29 May 2019 at 1641hrs (**[1;257-259]**). Accordingly, the Applicant had the initial burden of proving that she was dismissed to the civil standard, that is to say, on the balance of probabilities. The Tribunal, consisting of three members, met on Wednesday and Thursday, 7 and 8 October 2020 to hear and determine the Applicant's complaint. All of the material submitted by the parties has been taken into account by the Tribunal, whether specifically referred to in this judgment or not.

1.3 The Tribunal was conscious that both the Applicant (who had the assistance of a McKenzie friend throughout the hearing) and the Respondent were not legally represented and was anxious to make sure that all necessary steps were taken to ensure that they both had a fair hearing. The Tribunal took

account of the Deputy Bailiff's general comments in ***Cotterill v States of Guernsey*** (Guernsey Royal Court, Judgment 58/2017) and, in particular, those at paragraph 45 concerning the need to give appropriate help to unrepresented parties regarding procedure and possibly also with the case that they wish to present. Accordingly, the Tribunal took care to explain the Tribunal's procedure carefully to the parties throughout the proceedings and to explore potential arguments and lines of questioning that they could have advanced. That being said, the Tribunal was also mindful of the commentary in paragraph 44 of ***Reynard v Fox*** [2018] EWHC 443 (Ch) that the fact that a litigant was acting in person was not in itself a reason to disapply procedural rules, orders or directions or excuse non-compliance with them. The exception to that principle being that a special indulgence to a litigant in person might be justified where a rule was hard to find, difficult to understand or it was ambiguous.

2.0 Background

2.1 When the Applicant opened her case to the Tribunal she said that she relied expressly upon three matters that converted her resignation into constructive dismissal. Specifically, these were:

(1) health and safety issues (which came into focus particularly after the Applicant had an accident at work in May 2018);
(2) a contractual dispute with the Respondent in 2017; and
(3) bullying and harassment in the workplace during the last 18 months of her employment (particularly from Clair Sequeira).

2.2 She elaborated upon the bullying and harassment allegation during her closing speech and argued that whilst the Respondent was focusing upon their interpretation of bullying as equating to personal name calling, she relied upon the general background during her employment with the Respondent. She drew the Tribunal's attention to the consequences of a poor stocktake result in October 2018 that she maintained was used regularly against her (although no disciplinary procedure was invoked). She said that it was unfair to rely upon it in that way and that it was used to "belittle" her in her managerial role. She felt aggrieved that the Respondent had failed to take into account the fact that because of a budget error earlier in the year she was understaffed.

2.3 In addition, the Applicant considered it unfair that she had been formally disciplined (in March 2019 and an appeal in May 2019) about a burglary at the George store, Guernsey on 14 January 2019 during which the safe had been accessed as a consequence of the keys having been left in an unsecure location. She considered her treatment particularly unfair given that another store in Jersey also kept the safe keys in an unsecure location, but nobody had been disciplined. She argued that because she had introduced the subsequent security measures to keep the safe keys secure the disciplinary process was unjustified.

2.4 The Applicant also drew to the Tribunal's attention what she saw as the dilatory way in which the Respondent dealt with her grievance submitted to Tony O'Neill, the chief executive officer, on 23 April 2019 (**[1;229-232]**). A meeting pursuant to the Respondent's grievance policy took place on 5 June 2019 following a number of emails between the Applicant and Stephen Forrester, managing director, that were necessary to fix the date (**[1;215-225]**). Notes of that meeting appear at **[1;233-254]**.

2.5 With regard to the 2017 contractual dispute, the Applicant argued that her new contract dated 22 December 2017 (**[1;41-49]**) required the Respondent to review her salary in February 2019 and increase it to £50,000. She disputes that she did not raise this issue in February 2019.

2.6 The Applicant argued that although her accident at work happened in May 2018 it was still relevant to her constructive dismissal because the dangers had not been removed until after she left her employment. She explained that the Respondent had failed to ensure a safe working environment, failed in their duty of care towards employees and had failed to implement their "well working" policy.

2.7 In their opening speech, the Respondent explained that they are one of the largest employers on the Channel Islands and that the Applicant was a trusted and valued employee. They argued that there was no contractual breach that could amount to constructive dismissal, no bullying or harassment and that the accident at work in 2018 was so long ago that it had no influence on the Applicant's decision to resign. The Respondent drew the Tribunal's attention to the fact that after the Applicant's resignation on 29 May 2019 in which she identified her last working day as 28 June 2019, the Applicant purported to submit a further "resignation" that specifically alleges constructive dismissal on 28 June 2019 at 1059hrs (**[1;263-265]**).

2.8 They emphasized in their closing speech that the Applicant had not been bullied and that she had not told them anything about her health and safety concerns before she submitted her grievance. They also point out that the Applicant's resignation was on the same day as her "return to work" interview (**[1;319-321]**) during which she said that she would be open to mediation to address her problems with Clair Sequeira and that the Applicant never asked for mediation to take place. The crux of the Respondent's case is that the Applicant did not like or agree with the disciplinary process and the appeal; after that she decided to make the allegations of bullying.

3.0 Evidence Summary

3.1 The Applicant made the affirmation and read out her witness statement (**[2;361-364]**). She explained how, in 2017, she had a dispute with the Respondent concerning her contracted role that resulted in her signing a new contract (**[1;41-49]**); her senior manager, Clair Sequeira, then became hostile towards her and subjected her to more scrutiny. She described how she

worked excessive hours with insufficient staff support and was bullied by Clair Sequeira who constantly criticised her. This all led to increasing levels of stress and anxiety, for which she had sessions of therapy.

3.2 The Applicant described that in May 2018 she fell up the stairs at work while carrying boxes and hurt her knee. Her claim against the Respondent for personal injury is still ongoing.

3.3 The Applicant also explained that as a result of a poor stocktake in October 2018 she was criticised about it for the remainder of her career, although she maintains the deficit was as a result of poor data quality which was never corrected even after its discovery. She then told the Tribunal about her disciplinary hearing that came about following a burglary at the George store, Guernsey.

3.4 Matters appeared to come to something of a head when the Applicant had an informal meeting with Clair Sequeira in the Cornish Bakery coffee shop, Guernsey. The Applicant told the Tribunal that during this meeting Clair Sequeira told her it would be in her best interest to look for another job as this would give her more time to secure a new position.

3.5 During cross-examination the Applicant said that the bullying came from: understaffing (**[1;122]**), lack of budget (**[1;121]**), being required to cancel her holiday on one occasion (**[1;122]**), no training being given to her (**[1;130]**), lack of support from Clair Sequeira (**1;179]**), lack of training (**[1;180]**) and the fact that she had been disciplined for something when employees at a Jersey store had not been disciplined for doing the same thing (**[1;193]**).

3.6 The Applicant also explained that the delay in the Respondent dealing with her grievance contributed to her decision to resign. She thought that the delay between submitting her grievance on 23 April 2019 and the meeting on 5 June 2019 indicated that the Respondent did not take her allegations of bullying seriously.

3.7 When questioned by the Tribunal, the Applicant said that she did not know if she had been constructively dismissed on 29 May 2019 (the date of her first resignation **[1;259]**) or on 28 June 2019 (the date of her second purported resignation **[1;263]**). She had not left without notice on 29 May 2019 because she did not have the financial resources to do so; she had not secured another job and was worried that the Respondent would not have honoured her outstanding pay and pay in lieu of holidays if she had left immediately.

3.8 Linda Rence (called on behalf of the Applicant) made the affirmation and read her statement (**[2;6-7]**). She gave examples of Clair Sequeira's behaviour towards the Applicant and explained her view of health and safety at the Respondent's stores, staffing levels and the conduct of the disciplinary proceedings against the Applicant. She described Clair Sequeira as a "bully".

3.9 When cross-examined she explained that she had not made anyone else aware of Clair Sequeira's bullying behaviour and that it only really began after the burglary on 14 January 2019. The reason why she thought Clair to be a bully was that she always had a negative opinion of the Applicant.

3.10 Magdalena Chabros (called on behalf of the Applicant) made the affirmation and read her statement (**[2;1-3]**). Her evidence related to how she perceived Clair Sequeira to have been a good manager at first, but that those skills diminished after the arrival of Catriona (director of finance).

3.11 Under cross-examination she explained that she had never seen either Catriona or Clair bully the Applicant. She also said that she thought that the Applicant's disciplinary process had been done "by the book".

3.12 Emily Morison(called on behalf of the Applicant) made the affirmation and read her statement (**[2;4-5]**). Her evidence related to Clair Sequeira's behaviour towards her. She perceived Clair to be rude and cold. She did not describe any incidents of bullying towards the Applicant.

3.13 Under cross-examination she explained that she had not seen Clair Sequeira bully the Applicant or anyone else, although she would classify Clair as a bully. She said that she had spoken to others (Lesley and Brian) about Clair's behaviour, but that the response was that there was nothing that could be done about it.

3.14 The Applicant also provided a witness statement from Kyra Butcher who was not called due to illness. The Tribunal read the statement and would attach such weight to it as was appropriate given that it had not been tested by cross-examination.

3.15 Clair Sequeira (called on behalf of the Respondent) made the affirmation and read her statement (**[1;29-32]**). She explained her managerial style with the Applicant and the various issues that had arisen during the Applicant's employment. She specifically denied ever having bullied the Applicant and explained that she thought that the Applicant's relationship with her changed after she had challenged the Applicant about stock management and cash control matters.

3.16 When cross-examined she accepted that there had been an oversight in the original 2018 budget (set in February 2018), but that this had been corrected by June 2018. Consequently, any staffing level problems were not as a result of budget issues. She acknowledged that the Applicant could not cover her contractual role because of staffing issues from time to time and that she had been careful only to appraise the Applicant on those areas that she had been able to perform. She specifically relied upon the Applicant's job description (**[1;46-49]**) and its requirement for "flexibility". She accepted that the Applicant had been asked to close down a store as a result of staff illness, but said that this was part of the role of a multi-site operations manager. Training new staff was also part of the Applicant's role. She said that she had tried to

support the Applicant during difficult times, including making extra visits to the Applicant's stores and taking over some responsibilities (such as for recruitment and promotional events) where appropriate.

3.17 Jessica Smith (called on behalf of the Respondent) made the affirmation and read her statement (**[1;25-26]**). Her evidence related mainly to the conduct of the disciplinary process against the Applicant concerning the burglary in January 2018. She also explained that she had discussions with the Applicant following her return to work during which the Applicant did say that she had some concerns, but did not need any adjustments for her return. She told the Tribunal that she suggested to the Applicant that mediation might be a way to resolve her perceived feelings with Clair and that although the Applicant was invited to submit suitable dates, none were received.

3.18 Under cross-examination she confirmed that the disciplinary process concerned the Applicant's failure to ensure the Respondent's premises were safe and secure. She said that Ryan Williams completed the return to work interview (**[1;319-321]**). The Applicant's grievance was originally submitted to the chief executive officer who then passed it to the managing director (Stephen Forrester). She would have expected the Respondent to keep the Applicant informed about the progress of the grievance process.

3.19 Alison Correia (called on behalf of the Respondent) made the affirmation and read her statement (**[1;34]**). She explained that she was the note taker for the appeal against the disciplinary process and for the grievance meeting. She also said that she did not think that the Applicant had been bullied or victimised in any way and that the Applicant was quite able to raise any concerns that she might have had. She said that she considered the Applicant to have received sufficient human resources support.

3.20 When cross-examined, she said that she was not aware of any steps taken by the Respondent to mitigate issues that the Applicant had with Clair Sequeira before the grievance was raised.

3.21 Caroline Slowey-Dickinson (called on behalf of the Respondent) took the oath and read her statement (**[1;33]**). Her evidence related to how she reviewed the investigation that led to the disciplinary process against the Applicant. She considered the process to have been fair and based only on facts. She said that she had never seen the Applicant being bullied and that the Applicant had not raised this issue during the disciplinary hearing.

3.22 When cross-examined, she said that the Applicant had failed to follow up on compliance checks even though they had been completed (**[1;167-168]**). She agreed that the Applicant had asked for extra training, but only in general respects (**[2;200]**).

4.0 Legal Framework

4.1 Since the Respondent denied that the Applicant was dismissed, it was for the Applicant to prove, on the balance of probabilities, that she had terminated her contract of employment, with or without notice, in circumstances such that she was entitled to terminate it without notice by reason of the Respondent's conduct (see section 5(2)(c) of the 1998 Law). In order for the Applicant to be able to claim constructive dismissal, four conditions must be met:

(1) There must be a breach of contract by the Respondent. This may be either an actual breach or an anticipatory breach.

(2) That breach must be sufficiently important to justify the Applicant resigning, or else it must be the last in a series of incidents which justify her leaving.

(3) She must leave in response to the breach and not for some other, unconnected reason.

(4) She must not delay too long in terminating the contract in response to the Respondent's breach, otherwise she may be deemed to have waived the breach and agreed to vary the contract.

4.2 The Tribunal is satisfied that the concept of constructive dismissal in Guernsey law is so similar to English law that English authorities may be used to guide the way through what can potentially be difficult legal questions.

4.3 In ***Western Excavating (ECC) Ltd v Sharp*** [1978] QB 761 the Court of Appeal made it clear that questions of constructive dismissal should be determined according to the terms of the contractual employment relationship and not in accordance with a test of 'reasonable conduct by the employer'. The Court of Appeal has since reaffirmed that lawful conduct is not capable of constituting a repudiation even though it may be unwise or unreasonable in industrial relations terms (see ***Spafax Ltd v Harrison*** [1980] IRLR 442). When deciding whether there has been a breach of contract, the Tribunal must reach its own conclusion on this question. The test is not whether a reasonable employer might have concluded that there was no breach: it is whether on the evidence adduced before it the Tribunal considers that there was.

4.4 In ***Malik v Bank of Credit and Commerce International SA*** [1997] IRLR 462 the implied term (often referred to as 'the T&C term') to behave reasonably towards employees was held to be that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The T&C term is of potentially wide scope; it can extend to extremely inconsiderate or thoughtless behaviour. For example, refusing to investigate complaints promptly and reasonably is capable of falling into this category (see ***British Aircraft Corpn v Austin*** [1978] IRLR 332). Unacceptable abuse may fall within its scope: ***Palmanor Ltd v Cedron*** [1978] IRLR 303, and indeed any conduct which is 'so intolerable that it amounts to a repudiation of the contract': per Phillips J in ***Austin***. However it

needs to be stressed that the conduct does need to be repudiatory in nature in order for there to be a breach of the implied term of trust and confidence.

4.5 Some constructive dismissal cases which arise from the undermining of the T&C term 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 her taking that action, but when viewed against a background of such incidents it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.

4.6 In ***Omilaju v Waltham Forest London Borough Council*** [2005] EWCA Civ 1493 the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series the cumulative effect of which was to amount to the breach. Although the final act may not be blameworthy or unreasonable it had to contribute *something* to the breach even if relatively insignificant. If the final act did not contribute or add anything to the earlier series of acts it is not necessary to examine the earlier history. The Court of Appeal decision in ***Kaur v Leeds Teaching Hospitals NHS Trust*** [2018] EWCA Civ 978 contains an important discussion of the whole last straw concept. Underhill LJ set out the following passages from the judgment of Dyson LJ in ***Omilaju*** which he said sum it all up and should require no further elucidation:

> ''*15. The last straw principle has been explained in a number of cases, perhaps most clearly in* ***Lewis v Motorworld Garages Ltd*** *[1985] IRLR 465. 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:*
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> > *"(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? … This is the 'last straw' situation."*
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> *16. 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.…*
>
> *19. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise*

or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20. I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle."

4.7 The Applicant must have left in response to a breach committed by the Respondent. This breach may be an actual breach or an anticipatory breach. It is not enough that the Applicant expected the Respondent to repudiate the contract and left in anticipation. Nor will conduct subsequent to the resignation convert that resignation into a constructive dismissal.

4.8 Although the classic formulation by Lord Denning in ***Western Excavating*** speaks of the Applicant making her mind up 'soon', there is no fixed time within which she must do so and so a delay per se will not amount to affirmation in law, albeit it will often be an important factor: ***Chindove v William Morrison Supermarkets Ltd*** UKEAT/0201/13 (26 June 2014, unreported). A *reasonable* period is allowed. It depends upon all the circumstances including the Applicant's length of service (***G W Stephens & Son v Fish*** [1989] ICR 324, EAT, where three months was held not to be excessive), the nature of the breach, and whether the Applicant has protested. On the

other hand, mere protest will not necessarily prevent an inference that the Applicant has waived the breach, although a clear reservation of right might do so.

4.9 Where the Applicant is faced with giving up her job and being unemployed or waiving the breach, it is not surprising that the courts are sometimes reluctant to conclude that they have lost the right to treat themselves as discharged by the employer merely by working at the job for a further period. This was accepted expressly by the EAT in ***Chindove*** and was said to be particularly so in the case of a longer-serving employee with serious financial commitments and more uncertain prospects of alternative employment.

5.0 Facts Found

5.1 In the case of ***Appelqvist v States of Guernsey*** (Guernsey E&DT, ED008/10) the Tribunal accepted that the Oxford English Dictionary defined "bullying" as "overbearing insolence; personal intimidations; petty tyranny". The Tribunal adopted that definition in the context of this case.

5.2 What most struck the Tribunal was that the Applicant reacted badly to criticism, especially when delivered by Clair Sequeira. The Tribunal is satisfied that during the Applicant's employment there were problems, sometimes of her own making and sometimes not, that required managerial involvement and comment.

5.3 The Tribunal finds that the contractual issue relied on by the Applicant related to events in 2017 and was effectively resolved by the signing of the new contract. In those circumstances, the Tribunal finds that any breach of contract by the Respondent that led to the new contract was not a cause of the Applicant's resignation on 29 May 2019.

5.4 Similarly, the health and safety issues relied upon by the Applicant following her accident at work in May 2018 are of too general a nature and do not amount to a repudiatory breach by the Respondent.

5.5 What remains, therefore, is the allegation of bullying and harassment (including the individual matters listed in paragraph 3.5 above) and whether the Applicant can rely upon the "last straw" doctrine as discussed in paragraph 4.6 above. The Tribunal finds that the behaviour of Clair Sequeira complained of by the Applicant in support of her allegations of bullying is simply not supported by the other witnesses. What the Tribunal finds is that Clair Sequeira was obliged to make adverse remarks to the Applicant from time to time about things that had happened in stores managed by the Applicant and that the Applicant either did not agree with those remarks or simply did not like them. The Tribunal finds that this does not amount to bullying within the definition set out in paragraph 5.1 above and did not amount to a repudiatory breach of the contract of employment by the Respondent.

5.6 The Tribunal also finds that the disciplinary investigation, hearing and appeal were all conducted in a fair manner and that whilst the stocktaking problem could, perhaps, have been handled better by the Respondent, that did not amount to a repudiatory breach. So far as the delay in dealing with the Applicant's grievance is concerned, the Tribunal finds that a delay from 23 April 2019 to 5 June 2019 is not unreasonable especially when considering the investigation that was necessary to prepare for it and the difficulty with the participants' diaries. Accordingly, this aspect of the Applicant's complaint does not amount to a repudiatory breach.

5.7 The Tribunal finds that what happened in this case falls within the ambit of the daily cut and thrust of managerial necessity in a competitive industry. The Applicant had become a multi-site operations manager and she had a number of weighty responsibilities; the Respondent was entitled to take reasonable steps to ensure that its interests were being looked after by the Applicant. The Tribunal is satisfied that, on the balance of probabilities, the actions of the Respondent did not overstep the mark and certainly did not amount to a breach of the contract of employment.

5.8 The Tribunal had regard to the earlier decision of ***Allen v CarpetRight plc*** (Guernsey E&DT, ED002/13), but notes that it is not binding on the Tribunal and is fact specific. In those circumstances, as it decides no principle of general application or importance the Tribunal finds it of very limited assistance.

6.0 Conclusion

6.1 For the reasons set out above, the Tribunal unanimously concludes that the Applicant was not constructively dismissed. In those circumstances the Tribunal dismisses the Applicant's claim and makes no award.

7.0 Costs

7.1 The Tribunal's power to awards costs is discretionary and governed by paragraph 6 of the Schedule to The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 and The Employment Protection (Recoverable Costs) Order, 2006.

7.2 Having taken into account all of the material before it, the Tribunal has decided not to award costs to either party.

J Hill	20 October 2020
……..	……..
Crown Advocate J Hill	Date