THE INDUSTRIAL TRIBUNALS

CASE REF: 1045/19

CLAIMANT: **Sridevi Seeram**

RESPONDENT: **Almac Pharma Services Limited**

DECISION

The unanimous decision of the tribunal is that the claimant had not been dismissed; she had resigned. She had not been unfairly dismissed from her employment. Her claim is therefore dismissed.

CONSTITUTION OF TRIBUNAL

Vice President: **Mr N Kelly**

Members: **Ms Eileen McFarline**
Mr Frank Murtagh

APPEARANCES:

The claimant appeared in person and was unrepresented.

The respondent was represented by Mr Peter Bloch of the Engineering Employer's Federation.

BACKGROUND

1. The claimant had been employed as a product quality officer by the respondent company from 1 August 2016 to 15 October 2018.

2. The respondent company is a pharmaceutical manufacturer.

3. On 28 September 2018, the claimant had a conversation with a senior manager. That manager reported that conversation to the Human Resources Department of the respondent company and he indicated that he had serious concerns about the nature of that conversation.

4. The manager did not want formal disciplinary or other action to be taken against the claimant.

5. On 8 October 2018, two of the respondent's managers, Ms Donna McKenna and Ms Jodie Quinn, met with the claimant in an informal meeting to ask her for her account of the relevant conversation on 28 September 2018.

6. The claimant did not provide any such account and apparently took serious offence at being asked for that account. She threatened to resign on several occasions during the course of that meeting when it was suggested to her that the senior manager had felt that the content of the conversation had been "inappropriate".

7. The claimant left the meeting and later on the same day, 8 October 2018, she emailed Ms McKenna. That email was headed Subject - "resignation". She asked for four days annual leave which was granted.

8. On 10 October 2018 Ms McKenna asked the claimant by email to clarify whether she was resigning from her position. She pointed that the claimant had threatened to resign on several occasions in the course of the meeting on 8 October 2018 and that the email of 8 October 2018 had been headed Subject - "resignation".

9. On 11 October 2018, in a lengthy reply, the claimant stated:-

> *"I decided to resign against my will due to your behaviour in the meeting". (That remark was included on two occasions in the email).*
>
> *"I was forced to leave my job against my will".*
>
> *"I can only <u>reconsider</u> my decision in below (SIC) given conditions -" (Tribunal emphasis).*

10. The claimant's four days annual leave expired after Friday 12 October 2018. On Monday 15 October 2018 the claimant had been due to return to work. She did not return to work.

11. The respondent accepted her resignation by email of 16 October 2018 effective from 15 October 2018.

12. The claimant purported to withdraw the resignation by letter of 24 October 2018. She stated:-

> *"I wish to withdraw my resignation -".*
>
> *"I was forced to resign as a response to the fundamental breach of my contract with Almac".*

13. The respondent did not accept the withdrawal of that resignation.

14. The claimant, with the assistance of Paul Doran Law, who at that stage were representing the claimant, lodged a claim with the tribunal on 17 December 2018. That claim was explicitly and clearly a claim of unfair dismissal. It was not a claim of constructive unfair dismissal and it was not a claim of race discrimination. The claimant denied in that claim form that she had resigned.

15. In the claim form under the heading "legal basis of claim" the claimant stated:-

> *"27. The claimant contends that she had not resigned from her position with the respondent [which requires a formal letter of resignation*

signed by the claimant as per her contract of employment], but rather sought a resolution of the complaints made against Donna McKenna and others in her emails to the respondent following a meeting on 8 October 2018."

16. The claimant is no longer represented by Paul Doran Law with whom she appears to be in dispute.

17. Therefore the claim before the tribunal is a claim of alleged unfair dismissal contrary to the Employment Rights (Northern Ireland) Order 1996. The tribunal is a statutory tribunal and only has jurisdiction to determine claims which are properly before it.

18. The claimant does not appear to accept this. In the course of the hearing and indeed in the course of the case management procedure, she argued that she had not resigned and that she had been unfairly dismissed. At times, she also seemed to argue that she had resigned and that she had been constructively and unfairly dismissed. She also argued that her claim had contained a claim of alleged race discrimination in relation to the termination of her employment. She alleged that Ms McKenna, Ms Quinn and others in the respondent company had discriminated against her on grounds of her race or nationality in relation to the events immediately leading up to the termination of her employment; ie from 28 September 2018 to 15 October 2018.

PROCEDURE

19. The claim had been case managed on two occasions.

20. On the first occasion, 15 March 2019, the claimant had been represented by Mr Cormac Rice of Paul Doran Law. The record of the Case Management Discussion recorded:-

"This is a claim of alleged unfair dismissal and the core issue is whether or not the claimant resigned. The respondent alleges she resigned and the claimant alleges she did not resign."

21. At that Case Management Discussion, the Vice President stated that it appeared from the papers that this was an unfair dismissal claim, where the claimant had stated that she had been dismissed and where the respondent had stated that she had resigned. The claimant's representative, Mr Rice, stated that that was correct. There was a discussion about whether the claim should be listed for two or three days. It was felt that it was probably a two day case but that it should be listed for three days to ensure that it would be completed in one hearing.

22. The record of the Case Management Discussion was sent to the representatives of the parties. The claimant, and her representative did not seek to argue either in the course of the Case Management Discussion, or immediately thereafter, on receipt of the record of that Discussion, that the claim had been either a claim of constructive unfair dismissal or a claim of alleged race discrimination. Neither the claimant nor her representative sought to amend the claim in either respect.

23. In the course of that Case Management Discussion on 15 March 2019, directions were given in relation to the exchange of notices and exchange of witness statements. Those directions were repeated in the record of that Discussion.

24. The hearing was listed for 13, 14 and 15 August 2019.

25. On 2 April 2019, the Notice of Hearing was sent to the parties and to their representatives.

26. On 31 May 2019, Paul Doran Law emailed the tribunal to state that they were coming off record for the claimant.

27. The tribunal notes that the claimant had been sufficiently familiar with the tribunal procedure to apply on 16 June 2019 for permission to extend the time limit to exchange her witness statement with the respondent's representative and indeed to apply for witness attendance orders. That letter of 16 June 2018, again did not contain any application to amend the claim to include a claim of constructive unfair dismissal or any application to amend the claim to include a claim of alleged race discrimination.

28. A second Case Management Discussion was held on 5 July 2019. The respondent had sought a postponement on the basis that their representative was on holiday. That application had been refused. The claimant had not complied with the direction given on 15 March 2019 to exchange her witness statements with the respondent. The respondent had complied with that direction to supply witness statements to the claimant.

29. The claimant was directed to provide her signed and dated witness statement(s) to the respondent's solicitor no later than 11 July 2019.

30. In the Discussion, the Vice President had stated repeatedly that this was an unfair dismissal claim. The issue was whether there had been an effective resignation and, if so, whether it had been withdrawn. The claimant in the course of a lengthy discussion of the claim and a discussion of whether or not either Mr Armstrong or Ms McBurney had relevant evidence, did not seek to argue with that proposition. She did not seek to raise an issue of race discrimination or seek to amend the claim.

31. The record of the CMD was sent to the parties on 16 July 2019.

32. On 14 July 2019 the claimant wrote to the tribunal alleging that the witness statements sent to her by the respondent had been "invalid" because they had been headed with the incorrect case number. The correct case number had been on the respondent's covering letter but the individual witness statements, which had clearly identified the case, had contained an incorrect case number in their heading. That typographical error was corrected.

33. On 22 July 2019, the claimant wrote a lengthy email to the tribunal disputing the record of the Case Management Discussion. She stated that she had never resigned. She then stated that she had submitted a withdrawal of resignation after an unfair dismissal and not after a resignation.

She alleged that the dispute was inter alia:

> *"Whether the basis of this unfair dismissal is racial discrimination or not."*

There was no request to amend the claim or to delay the hearing which was due to commence some three weeks later.

34. At the second Case Management Discussion, the claimant also sought a witness attendance order against Mr Alan Armstrong, Chairman and CEO of the Almac Group, and Mr Graham McBurney, the Managing Director and CEO of the respondent company. The tribunal did not grant those witness attendance orders. Neither of those individuals appeared to have any evidence to give in relation to this claim which was an allegation of unfair dismissal.

35. The claimant was advised:

> *"A witness attendance order is a serious restriction on liberty. It requires the physical attendance of that person on a named date or dates with a potential criminal penalty. Such a restriction is not lightly or automatically given.*
>
> *I can see no grounds on which it would be proper for me to issue a witness attendance order against either Mr McBurney or Mr Armstrong and the application is refused."*

36. The witness statement procedure was used in the course of this hearing. Witness statements were provided by both parties in advance of the hearing and according to the directions indicated above, those statements were to take the place of evidence in chief. Each witness, including the claimant, swore or affirmed to tell the truth, adopted their witness statement as their evidence and moved immediately into cross-examination and brief re-examination.

37. The claimant provided her evidence in chief by witness statement and was cross-examined. She did not call any other witness in support of her claim.

38. The respondent company called Ms Donna McKenna and Ms Jodie Quinn, who gave evidence in chief by witness statement and were cross-examined. The respondent had exchanged a statement in advance of the hearing from Ms Sara Currie. However the respondent elected not to call Ms Currie to swear or affirm to that statement and therefore her statement was disregarded. The claimant appeared to be upset that she was not therefore allowed to cross-examine Ms Currie. It is not for the tribunal to direct which, if any, witness is produced by either party. If a person was not called by the respondent to give evidence, the claimant had no right to cross-examine that person.

39. The claimant was extremely difficult to deal with in the course of this hearing. She repeated questions and submissions extensively. She resisted and often ignored instructions and directions not to repeat questions or submissions and to move on as appropriate. She persisted in arguing that there was a race relations claim together with an unfair dismissal (or a constructive unfair dismissal) claim before the tribunal. As an example of her approach to this litigation, when the claimant had been making her final submission on the second day of the hearing for approximately one hour, the Vice President asked her to give an indication to the

tribunal of how long her submission would take. She refused to give such an estimate, stating that "*in massive cases it could take 200 years or 20 years or two hours*". The tribunal rose at that point for five minutes and on its return directed the claimant to complete her final submission within one further hour ie by 12.35 pm. In the event, she finished her submission by 12.00 noon.

Another example of her behaviour was that during her final submission, she asked; "*should I accept I am a prostitute*". It was unclear whether the claimant was suggesting that she had been accused of that by the respondent, or the respondent's witnesses. However it is clear that no such suggestion had been made either in the claimant's witness statement, the respondent's witness statements or indeed any stage in the meeting on 8 October 2018, in the subsequent correspondence or in the course of the tribunal hearing.

At another point, she stated:

> *"I can press charges against Ms McKenna, Jodie Quinn and Peter Bloch of defamation."*

40. The evidence had been completed on the first day of the hearing. There was sufficient time remaining for final submissions to have been given by the parties. The respondent wished to proceed on that basis. However, since the claimant was unrepresented and probably needed time to prepare her final submission, those submissions were directed to be given on the second day at 10.00 am. The respondent was directed to give its submission first. That submission lasted for a brief period, perhaps 10 minutes. The claimant concluded her submission at 12.00 noon. The tribunal met later on the second day to consider the evidence and the submissions and to reach a decision. This document is that decision.

RELEVANT LAW

41. The Employment Rights (Northern Ireland) Order 1996 provides:

> *"126-(1) An employee has the right not to be unfairly dismissed by his employer.*
>
> *127(1) For the purposes of this part an employee is dismissed by his employer if –*
>
> *(a) the contract under which he is employed is terminated by the employer (whether with or without notice),*
>
> *(c) the employee 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.*
>
> *129-(1) Subject to the following provisions of this Article in this Part "the effective date of termination"*
>
> *(a) in relation to an employee whose contract of employment is terminated by notice, whether given by*

his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect,"

42. In ***Sothern v Franks Charlesly and Company [1981] IRLR 278,*** the Court of Appeal determined that in that case, the Industrial Tribunal and the EAT had erred in finding that the meaning to be given to the words "I am resigning" was ambiguous. Fox LJ said at paragraph 17:

> *"I interpret them as meaning "I am resigning now". They indicate, it seems to me, a present intention of resigning."*

43. In that case the claimant had returned to work on the date after uttering the words "I am resigning" and had stayed at work for a few weeks. Fox LJ stated at paragraph 20:

> *"I do not find that inconsistent with the conclusion that I have indicated. A responsible employer may very well be expected to permit the employee to continue for a short time not withstanding a resignation."*

44. Fox LJ further stated:

> *"This is not a case of an immature employee or of a decision taken in the heat of the moment, or of an employee being jostled into a decision by the employer."*

45. Stevenson LJ stated at paragraph 28 that the words "I am resigning" were

> *"A simple statement of the speaker's intention to give up a job or an office or a contest now. That is what I understand the plain meaning of those three words would be. They do not naturally mean "I am going to resign in the future". They mean "I am resigning now" just as clearly as the shorter form for the present tense; "I resign" spoken, if you like by the chess player who sees that checkmate is only a matter of a few moves away".*

46. In ***Wilboughby v CF Capital PLC [2011] EWCA Civ 1115,*** Rimer LJ stated at paragraph 26:

> *"The principles of contract law ordinarily require that a person's intentions are ascertained not by reference to subjective intentions but objectively, by reference to how a reasonable man will interpret them."*

47. Stevenson LJ had stated in ***Sothern*** (above) that:

> *"The employers might have refused to accept the employee's decision to resign her post as their office manager. They did not refuse. They accepted it with thanks for her services and did not try to make her change her mind or accept her attempts to revoke a decision."*

48. In ***Wilboughby*** (above), Rimer LJ stated:

> *"37. "The rule" is that a notice of resignation or dismissal (whether given orally or in writing) has effect according to the ordinary interpretation of its terms. Moreover, once such a notice is given it cannot be withdrawn except by consent. The "special circumstances" exception as explained and illustrated by the authorities is, I consider, not strictly a true exception to the rule. It is rather in the nature of a cautionary reminder for the recipient of the notice that, before accepting or otherwise acting upon it, the circumstances in which it is given may require him first to satisfy himself the giver of the notice did in fact really intend what he had apparently said by it. In other words he must be satisfied that the giver really did intend to give a notice of resignation or dismissal, as the case may be. The need for such a so called exception to the rule was well summarised by Wood J in* ***Kwikfit (GB) Limited v Lineham [1992] ICR 183 and 191*** *and, as the cases show, such need will almost invariably arise in cases in which the purported notice has been given orally in the heat of the moment by words that may quickly be regretted.*
>
> *38. The essence of the "special circumstances" exception is therefore that in appropriate cases, the recipient of the notice will be well advised to allow the giver what is in effect a cooling off period before acting upon it. Kilner Brown J in* ***Martin v Yeoman Aggregates Limited [1983] ICR 314-318F*** *understandably referred to such a period as an opportunity for the giver of the notice to recant, or to withdraw his words, and this is in practice what is likely to happen. I would, however, be reluctant to characterise the exception as an opportunity for a unilateral retraction or withdrawal of a notice of resignation or dismissal since that would be to allow the exception to operate inconsistently with the principle that such a notice cannot be unilaterally retracted or withdrawn. In my judgment, the true nature of the exception is rather that it is one in which the giver of the notice is afforded the opportunity to satisfy the recipient that he never intended to give it in the first place – that, in effect, his mind was not in tune with his words."*

Relevant Findings of Fact

49. On 27 September 2018 the claimant emailed the Product Quality Manager, Mr McGurk to see if it was "possible to have a wee chat, I am free all day tomorrow".

50. That meeting was set up for 28 September 2018 at 10.00 am and scheduled to last approximately an hour. In the event, the meeting lasted from 10.00 am to approximately 10.35 am.

51. Mr McGurk was sufficiently concerned about the discussion between the claimant and himself that he went immediately to speak to Donna McKenna and Jodie Quinn in the Human Resources Department. He did not want to make a formal complaint or for disciplinary proceedings to be instituted.

52. A note was compiled later that day by Mr McGurk and forwarded to the HR Department. Mr McGurk recorded that the claimant had started to "detail some personal items". He stated that she had discussed her family, that she had been separated for several years and that she intended to leave Almac as soon as she was free to do so, as she had no financial issues. She stated that her culture around separated women and subsequent relationships meant such relationships were frowned upon. He stated that she said "this has never been an issue for her, she retained her married name to dissuade men - until she met me". He recorded that "she stated repeatedly she doesn't want there to be any issues, and she doesn't want me to think her creepy, that she is aware I am married and would never do anything to ruin a home/marriage". Mr McGurk concluded his handwritten note by stating:-

> *"Despite the request to keep this discussion between us, the nature of what was stated by SS obviously resulted in a degree of surprise, shock and some nervousness from myself - these nerves stem around how this could come back to bite me in some accusation in the future, and also suspicion that as PMP (tribunal's note - performance management process) was approaching, could this be some form of manipulation."*

53. Mr McGurk met with Ms McKenna and Ms Quinn on 5 October 2018. This was an informal meeting. The notes of that meeting were transcribed by Ms Quinn. Ms Quinn stated that these notes were accurate. The claimant alleged that these notes had been fabricated. Having listened to the claimant and to Ms Quinn, the tribunal unanimously concludes that it prefers the evidence of Ms Quinn. It is satisfied on the balance of probabilities that the notes were accurately transcribed and are truthful.

54. This interview took approximately one hour to complete. Mr McGurk stated that the claimant had spoken to him at an earlier date and asked for his personal mobile telephone number because she wanted to speak to him outside of work. He had refused to supply that number.

55. Mr McGurk repeated that on 28 September the claimant had talked about her family, her marriage and her culture. She had stated that she had been separated for years and that divorced women were frowned upon. She stated that she had kept her married name in order to dissuade men, but that had "never been an issue until I met you". He stated that that had left him feeling off guard and uncomfortable.

56. He said that the claimant:-

> *"Said her lack of productivity is due to nerves, looking at tall men in case it is me, doesn't want her colleagues to see the way she looks at me. She said "I know you're married", and "don't think I am creepy".*

57. Mr McGurk stated that he had been "rattled and uncomfortable". He stated he was "concerned, maybe a bit suspicious also". He stated that he was "just concerned there would be manipulation".

58. On 8 October 2018, Ms McKenna and Ms Quinn arranged an informal meeting with the claimant at 4.00 pm. The claimant complained to the tribunal that insufficient

notice of this meeting had been given to her and that she had not been given any advance details of the subject of the meeting. The tribunal is satisfied that this had been the case. However, there had been no requirement on the respondent, in the circumstances of this case to provide further details, since there had been no disciplinary charge and no formal Dignity at Work investigation. This had been an informal meeting and no particular level of notice had been required.

59. Ms Quinn opened the meeting by indicating that this would be an informal discussion which concerned the conversation she had had with Mr McGurk about a fortnight previously. The claimant responded that she had had "personal issues", and that Mr McGurk had said it was confidential. Ms Quinn asked the claimant if there been anything in that conversation that could be deemed inappropriate.

60. The claimant in the course of the hearing and in the course of her cross-examination of Ms Quinn and Ms McKenna, repeatedly stated that the respondent had determined that her conversation with Mr McGurk had been inappropriate and that the respondent had accused her of that. The tribunal is satisfied that the notes accurately reflect the conversation in the course of this meeting, and that no such accusation had been made. At its height, the claimant had been asked if anything had occurred in that conversation that could be deemed inappropriate. She had been told that Mr McGurk had felt the conversation had been inappropriate.

61. It is notable that as soon as the word "inappropriate" was used in that fashion, the claimant had stated that:-

> *"I will submit my resignation".*

The claimant in cross-examination accepted that she had stated that she would resign on each occasion that the word "inappropriate" had been used.

62. The claimant had been asked again to describe the meeting with Mr McGurk. The claimant again refused to discuss it, as she stated it had been confidential and she wouldn't answer anything.

In cross-examination, and during her final submissions, the claimant gave different reasons for not describing the conversation which had occurred on 28 September 2019 during the meeting on 8 October 2018. These were (paraphrasing slightly):

- There was no complaint and no allegation was put to me.

- I needed the "concept" of the meeting.

- I did not want to name my colleagues. I did not believe they were eligible for an investigation and I did not want to get them into trouble.

63. The claimant had been asked why she felt the need to resign. She had stated that:-

> *"This is unacceptable. People have human minds. Could have said this to anyone, you, Stephen."*

64. The claimant complained that Mr McGurk "shouldn't have told HR". She stated that she had to leave and that she "will provide my resignation".

65. Ms McKenna stated that Mr McGurk was "entitled to feel secure, need a way to move forward; work alongside each other". The claimant replied that:-

> *"Don't want to answer any of these, I trusted him!".*

66. The claimant asserted that what had been said was appropriate, but she did not indicate at any stage what had been said. She repeated that she didn't want to discuss the matter as Mr McGurk had told her that it was confidential.

67. The claimant repeatedly refused to engage in the discussion or to tell Ms McKenna and Ms Quinn what had occurred on 28 September. She repeated that she would resign when she was told that:-

> *"Okay, if you refuse to engage, we may have to go formal".*

68. The claimant stated to Ms Quinn:-

> *"If I resign tomorrow, tell Phil (McGurk) that I am very heartbroken. What is your name?".*

69. Ms Quinn provided her name. The claimant stated:-

> *"Should I send my resignation to you?".*

70. Ms Quinn stated:-

> *"I process all resignations for Almac, but I cannot influence or advise you in any capacity around whether you should/shouldn't resign - totally up to you".*

71. The claimant replied:-

> *"I understand. No hard feelings, people just don't trust me because of my skin colour."*

Ms Quinn denied that that was the case, she stated:-

> *"Not the case whatsoever".*

Ms McKenna stated that:-

> *"If anyone else had that conversation, we would still be here".*

The claimant then stated:-

> *"That's fine. He has every right to feel uncomfortable. He could be lying, you wouldn't know."*

Ms Quinn stated:-

"Well we can't ascertain that if you refuse to put your point across".

72. The claimant's response was:-

"No answer for you, totally distressed, I should feel comfortable in work".

The claimant again raised the issue of resignation. She stated:-

"I don't want to come to work. What should I do? Work my notice?".

Ms Quinn stated again:-

"Can't advise you whether or not you want to resign".

73. The meeting ended at that point.

74. Later that evening at approximately 6.52 pm, the claimant emailed Ms Quinn and Ms McKenna. The email was headed:-

"Subject: Resignation".

The claimant applied for leave for four days. That was granted. In the remainder of the email, the claimant appears to suggest that the respondent should have had a meeting between Mr McGurk and herself to discuss the earlier conversation on 28 September. She alleged that the decision to discuss the matter with her had been "humiliating and insulting". She asked whether the treatment had anything to do with her race.

75. On 10 October 2018, Ms McKenna replied to the claimant using the same heading "Resignation". In that email, she explained again that Mr McGurk was not making a formal complaint, but that she had felt that it had been important that she met with the claimant. She repeated that it had been an informal process to make her aware that the type of comments and behaviours reported by Mr McGurk, could be considered inappropriate. She stated that the nature of the conversation could amount to sexual harassment and that if it happened again, could lead to consideration under the formal disciplinary process. *[Tribunal emphasis]*

76. The claimant throughout the hearing and in particular during her cross-examination stated that the email from Ms McKenna had directly accused her of inappropriate behaviour and sexual harassment. She repeated at some length how outraged she had been at this accusation. The tribunal has listened carefully to her evidence and also to the evidence of Ms McKenna. It has also carefully read the email. It is satisfied that no such accusation had been made. It is equally satisfied that the respondent had not concluded, at that stage, that it accepted in full or in part, the account of the conversation on 28 September which had been provided by Mr McGurk. The respondent had been concerned about the account put forward by Mr McGurk and had sought her own account of that conversation. She had refused repeatedly to give that account. The tribunal is also satisfied that Ms McKenna had simply wanted to make the claimant aware that the type of comments reported by

Mr McGurk (whether or not they had occurred on this occasion), could give rise to formal action and could amount to sexual harassment.

77. The tribunal is at a loss to understand how the claimant could regard this email as a direct accusation of either inappropriate behaviour or sex harassment.

78. At the end of that email, Ms McKenna stated:-

> *"You made several references to resigning during the meeting and have subsequently entitled your email 'Resignation', however, I am not clear whether this is your intention, or whether you wish to meet with the company to discuss the matter further. I would therefore be grateful if you could advise me as to how you wish to proceed by 12.00 noon on Friday 12 October 2018".*

79. The claimant replied to Ms McKenna on 11 October 2018. She stated that Ms McKenna's email of 10 October 2018 had been "deeply distressing and extremely threatening". The tribunal does not understand those comments.

80. The email from the claimant of 11 October 2018 accused Ms McKenna of "bullying" the claimant in the course of the meeting on 8 October 2018. She accused Ms McKenna of a "false accusation". She stated she felt threatened and subject to harassment.

81. The claimant stated at paragraph 14 of that email:-

> *"I decided to resign against my will due to your behaviour in the meeting, and I made several references to resign throughout the meeting as a response to your bullying and was forced to leave my job against my will because of your threatening behaviour".*

82. The tribunal is satisfied that this statement, even if assessed on its own, was clear and unambiguous. It was in the past tense and it made it absolutely plain that the claimant had resigned. It also made it plain that the claimant was, at that stage at least, accepting that she had resigned and alleging that she had been forced to resign.

83. The claimant stated on the second page of that email:-

> *"Due to the above said reasons, I don't feel that I could manage to work with you. I decided to resign against my will due to your behaviour in the meeting and from your mail, and if in case Almac allowed you to bully me in this way, that could amount to breach of* ***trust and confidence****".*

84. The tribunal is again satisfied that that statement, even if assessed on its own, was unambiguous. It made it absolutely plain that the claimant had resigned. It was in the past tense and clear. The claimant was, at that stage at least, accepting that she had resigned and was preparing the basis of a claim of constructive unfair dismissal.

85. The claimant went on to state:-

> *"I was forced to leave my job against my will as you created hostile environment for me to work and this could amount to* ***constructive dismissal****, as defined by the Employment Rights Act 1996, Section 95(1)(c)."*

86. The tribunal is satisfied that this was a clear and unambiguous statement of resignation and of an intention to allege constructive dismissal.

87. The claimant stated:-

> *"I do not deserve the way you treated me and it is highly damaging to my self-respect. I will submit a formal resignation following response of this email."*

88. This reference to a "formal resignation" appears to reflect the claimant's belief that she had been required by contract to submit a written resignation giving a set period of notice. The tribunal considered whether this statement in some way negated the previous clear statements that she had already resigned, and has concluded that it did not. It simply reflected the claimant's belief that she had in some way to formalise her resignation to comply with her contract.

89. The claimant went on to state:-

> *"I can only reconsider my decision in below given conditions - ".*

Those conditions which were set out by the claimant included an apology for "causing me severe distress, psychological pain and anguish".

Again the tribunal concludes that the reference to the possibility of her "reconsidering" a decision which had already been made could only be consistent with a resignation having been already made.

90. It is notable that, despite the invitation in Ms McKenna's email of 10 October 2018 to clarify her intention in relation to her resignation, the claimant affirmed on several occasions that she had resigned and did not at any stage, seek to withdraw that resignation, or to state in clear terms that she had not resigned.

91. Ms McKenna replied to the claimant on 15 October. That was the Monday after the conclusion of the claimant's agreed annual leave. The claimant had been due to attend work on that day and did not attend work. Ms McKenna stated:-

> *"The purpose of my email was to respond to the email you sent on 8 October 2018 and to clarify what your intentions were, given that the email was entitled 'Resignation'. You also made several references to resigning during the meeting on 8 October 2018 and they say you have not attended work today. I note that you have resigned from your position and we accept this with immediate effect".*

92. Ms McKenna repeated that the meeting with her on 8 October 2018 had been part of the informal Dignity at Work process and that they had wished to resolve the

matter informally. The claimant had refused the opportunities that she had been given at that meeting to provide her account of events on 28 September 2018. Ms McKenna stated that the claimant had admitted on 8 October 2018 that she could see how the conversation that she had had with Mr McGurk could have made him feel uncomfortable.

93. The claimant emailed Ms McKenna on 15 October to repeat her accusation about being threatened. She stated in particular:-

"You never gave me the opportunity to tell my account which is evident from both mails."

94. The tribunal is content on the balance of probabilities that this statement is entirely untrue. The claimant had been repeatedly asked in the course of the meeting on 8 October 2018 to describe what had happened in her conversation with Mr McGurk on 28 September. She had repeatedly declined to do so. In the course of her evidence to the tribunal, she accepted on several occasions that she had refused and had repeatedly refused to do so. She stated that she had not been prepared to do so because specific accusations had not been put to her. In the course of her meeting on 8 October 2018, she stated that she was refusing to do so because her original conversation with Mr McGurk had been "confidential". At later points, she stated that she had refused to reply because she required the "concept" of the meeting or because she did not want to get her colleagues into trouble. The tribunal does not accept any of these excuses as valid. This had been an informal meeting and an opportunity for the claimant to put her version of events. She had been given every opportunity to do so.

95. On 16 October the claimant emailed Ms Quinn and asked her whether Ms McKee had been the correct person to accept her resignation.

96. This is an issue which the claimant had raised repeatedly in the course of the tribunal hearing. Ms McKenna gave clear and unrebutted evidence that she had had the authority to accept the claimant's resignation. The tribunal accepts that this was correct.

97. The claimant emailed Mr Alan Armstrong, Chairman and CEO of the Almac Group and Mr Graeme Burney Chairman and CEO of the respondent Company on 16 October 2018. She had enclosed an email trail and stated:-

> *"I couldn't take it any longer, I am petrified for Donna's bullying, I was forced to take a decision to resign against my will".*

The claimant further stated:-

> *"As HR is confirming my resignation, this matter becomes extremely serious and I am not bound to any contract with Almac which frees me to go to media and publish my account of racial discrimination and bullying. Since the decisions made by Donna and HR represent Almac, the organisation as a whole, I wish to gain confirmation from both of you that the decisions are also your decisions personally and as the decisions of the entire organisation".*

98. Mr McBurney, emailed the claimant on 16 October to state:-

> *"I acknowledge receipt of your email and am responding on behalf of both Alan Armstrong and myself. I understand that these matters are currently with our HR Department and will be considered under the appropriate Company procedure."*

99. The claimant felt that she had been entitled to force the attendance of Mr Armstrong and Mr McBurney at the tribunal. There is however no evidence that either individual had had anything to do with the termination of her employment, other than the reply from Mr McBurney on 16 October 2018 which stated that the matters she had raised were being dealt with by others; the HR Department.

100. On 23 October 2018, Ms Quinn emailed the claimant to confirm that a Dignity at Work investigator had been appointed to consider the allegations she had made against Donna McKenna in her emails of 11 and 15 October 2018.

101. On 24 October 2018, the claimant emailed Ms Quinn to state:-

> *"Thank you for your email and continuous support, I am glad that these issues are finally getting resolved and I truly appreciate Almac's fair treatment towards me. Herewith I am attaching my withdrawal of resignation for your reference as the reasons for the resignation that you considered no longer apply".*

Given the content of the claimant's previous correspondence, the references on 24 October 2018 to "continuous support" and "fair treatment towards me" are difficult to understand.

102. That separate letter was entitled "Resignation Withdrawal Letter". It stated:-

> *"I wish to withdraw my resignation which you considered that I submitted on 16 October 2018".*

103. It went on to state:-

> *"I was forced to resign as a response to the fundamental breach of my contract with Almac".*

104. Neither of those two statements in that letter are easily reconciled with her argument that she had not resigned.

105. The claimant was asked in cross-examination why she had sought to withdraw a resignation when her argument was that she had never resigned. Her response was that this had been to facilitate a DAW investigation. She was unable to explain why that would have been the reason. A DAW investigation had proceeded even though the respondent maintained that she had resigned from her employment and that that resignation had been accepted. Such an investigation did not require her to return to work.

106. On 25 October 2018, Ms Currie emailed the claimant to state that Ms Quinn was currently out of the office, and that she was responding to her email in Ms Quinn's absence. She stated:-

> *"As previously advised:-*
>
> - *a Dignity at Work investigator will consider the allegations you made against Donna McKenna in your emails dated 11 and 15 October 2018 and we will be in contact in due course regarding this matter; and*
>
> - *the Company has already accepted and actioned your resignation effective from 15 October 2018. We will not be rescinding your resignation or reinstating you".*

107. The DAW investigation was conducted by Ms Grainne Hughes, the Vice President - Business Support Operations. The complaints were not upheld. Ms Hughes found there was no evidence to support any allegations of bullying, harassment or racial bias raised by the claimant in relation to Ms McKenna's behaviour either during the meeting on 8 October 2018 or during any email interaction thereafter, or with the process followed in relation to the concerns raised by Mr McGurk.

DECISION

Did the Claimant Resign or was She Dismissed?

108. The claimant accepted in cross-examination that, in the course of the meeting on 8 October 2018, she had stated that on several occasions that she would resign. She was specific that she had said so on each occasion when it had been suggested that Mr McGurk had found the conversation "inappropriate".

109. The tribunal has concluded that the notes compiled by Ms Quinn of the meeting on 8 October were truthful and accurate. It does not accept the claimant's unsupported assertion that those notes were fabricated for some reason.

110. Those notes refer on several occasions to a resignation. The claimant stated:-

> - *"I will submit my resignation".*
>
> - *"Trusted Phil, this is unbelievable, I will resign."*
>
> - *"That's confidential. Won't answer anything. Will walk away"*
>
> - *"will provide my resignation"*
>
> - *"better I go away"*
>
> - *"I will resign"*
>
> - *"if I resign tomorrow, tell Phil that I am very heartbroken"*
>
> - *"should I send my resignation to you?";*

- *"I don't want to come to work. What should I do? Work my notice?".*

111. The claimant, after leaving that meeting, wrote to Ms McKenna by email. That email was headed "Subject: Resignation". She asked for four days annual leave. That request was granted. That request is not inconsistent with a resignation. In the body of that email she made no further reference to a resignation.

112. Ms McKenna emailed the claimant on 10 October 2018 to ask for clarification. That email pointed out that the claimant had made several references to resigning during the meeting on 8 October and had subsequently entitled her email "Resignation". Ms McKenna stated that she was not clear as to the claimant's intention and asked the claimant to advise her how she wished to proceed by 12 October 2018.

113. The tribunal is content that the respondent acted properly in this regard. The claimant had clearly been upset in the course of the meeting on 8 October 2018 and her email of that date had almost immediately followed that meeting. A responsible employer would have done what Ms McKenna did on behalf of the respondent; ie ask the claimant to clarify her position and to confirm whether or not she was resigning.

114. The claimant emailed Ms McKenna on 11 October 2018. She made several references in the course of that email to a past or completed decision to resign. She stated:-

"I decided to resign against my will due to your behaviour in the meeting";

"I was forced to leave my job against my will";

"I can only reconsider my decision -".

The claimant's one reference to a "formal" resignation was consistent with her apparent belief that there was some contractual reason that an employee was legally obliged to submit a formal resignation.

115. What is clear is that the claimant did not at any stage in the course of that lengthy email say "I have not resigned".

116. The tribunal considers that a reasonable person, acting objectively, would have viewed that email of 11 October 2018 as a confirmation of her resignation.

117. However, even at that stage, the respondent did not move to accept that resignation. It waited until 15 October 2018 to see if the claimant returned to work. The claimant had been due to return to work on that date and had not applied for an extension of her annual leave, or for any other form of leave. When the claimant failed to return to work, the respondent accepted her resignation.

118. The tribunal unanimously concludes that the respondent had been entitled to do so. The combination of the claimant's words and her conduct meant that any reasonable employer considering the situation objectively, had been entitled to come to that conclusion, and would inevitably have come to that conclusion.

119. The claimant argued repeatedly in the course of the hearing that Ms McKenna had not been entitled to accept her resignation on behalf of the respondent Company. Ms McKenna's clear evidence which the tribunal accepts, was that she had been entitled to accept that resignation. There has been no rebuttal of that evidence beyond the claimant's unsupported assertions that she had not been so entitled.

120. The claimant also argued that the resignation had been ineffective because it had not been done "formally", and on notice, as indicated in the written contract of employment. That however is not the legal position. Any employee may resign at any time orally or in writing from any employment. No employer has the right to hold an employee in employment against their will, and any employer has the right to accept a resignation. The lack of a resignation or notice in strict compliance with the terms of a contract might in theory give rise to a claim of damages but that is a different matter.

121. The claimant also argued that she had withdrawn her resignation. However, it is clear that no employee, once they have resigned, and once that resignation has been accepted, has the right to unilaterally withdraw such a resignation.

122. In short, the claimant had resigned. That resignation had been accepted. She had not been dismissed.

Had the Complainant been Constructively and Unfairly dismissed?

123. As indicated above, it is clear that the claim properly before the tribunal was a claim of alleged unfair dismissal and not a claim of alleged constructive unfair dismissal.

124. The claimant had clearly been confused about the nature of her claim and did not appear at any stage to understand the difference between an unfair dismissal and a constructive unfair dismissal.

125. For the sake of completeness, and even though the tribunal has no statutory jurisdiction to determine such a claim, the tribunal will look at the issue of constructive unfair dismissal that has been raised repeatedly by the claimant.

126. The claimant accepted in cross-examination that, once Mr McGurk had raised his concerns, the respondent had been required to take those concerns seriously.

127. The respondent, through Ms McKenna and Ms Quinn, decided to meet the claimant informally and to ask her for her version of events on 28 September 2018. They did not at that stage institute a disciplinary process or a formal Dignity at Work process. They elected to deal with this matter, at least at that stage, informally. They also elected not to put specific accusations to the claimant, but to simply ask her an open question, ie to ask her what had occurred in the course of the conversation of 28 September 2018.

128. None of that can reasonably be argued to be a fundamental breach of contract entitling a person to resign.

129. Mr McGurk had not wanted to proceed with a formal complaint. Ms McKenna and Ms Quinn had been concerned that they had a duty of care to Mr McGurk and indeed a duty of care to the claimant. They had not wanted to escalate the

situation. However, they could not simply have ignored that situation. Their decision to speak informally to the claimant and to ask for her version of events had been an entirely reasonable decision and not in any sense a breach of contract, much less a fundamental breach of contract entitling the claimant to rescind that contract.

130. The conduct of that meeting on 8 October 2018 and the subsequent correspondence had again been reasonable. None of this had amounted to a fundamental breach of contract.

131. Therefore, if the tribunal had jurisdiction to consider a complaint of constructive unfair dismissal, the tribunal would have unanimously dismissed that complaint.

Had the Respondent unlawfully discriminated against the claimant on grounds of her race or nationality, in the circumstances which occurred from the reporting of the conversation on 28 September 2018 to the acceptance of her resignation and in relation to the associated correspondence?

132. As indicated above, there was no claim of alleged discrimination on grounds of race or nationality before the tribunal. Nevertheless, the claimant repeatedly and with perseverance continued with cross-examination and submissions in relation to such a claim. She resisted all directions to the contrary. The tribunal has no jurisdiction to determine any such claim.

133. In any event, and for the sake of completeness, the tribunal will consider those allegations as if it had such jurisdiction.

134. The claimant's basis for putting forward that allegation appears to have been that there had been, in her estimation, no other reason for the actions of the respondent in setting up and conducting the meeting on 8 October 2018 and in accepting her resignation thereafter. She produced absolutely no evidence that the respondent's actions in this regard had been motivated in any way by her race or nationality, other than repeatedly asserting that she was of a different race, nationality and culture than the other people involved.

135. As the Court of Appeal has pointed out in ***Madarassy v Nomura International Plc [2007] EWCA Civ 33*** a difference in status and a difference in treatment is not sufficient to establish a prima facie case of discrimination which would result in moving the onus of proof to the respondent. The fact that her race and nationality differed from Ms McKenna , Ms Quinn, Mr McBurney and Mr Armstrong, and that her employment had terminated, is not sufficient to enable a reasonable tribunal to infer unlawful discrimination. Something more is required. The claimant has been unable at any stage to point to any such factor which would then enable a reasonable tribunal to infer unlawful discrimination.

136. In fact the respondent's actions at all stages have been careful, reasonable and entirely understandable. The respondent had had no choice but to consider the complaints made by Mr McGurk. The matter had not been determined in Mr McGurk's favour at that stage. The respondent had not at that stage accepted Mr McGurk's account of the conversation on 28 September, either in full or in part. It had simply, as it had been bound to do, sought the claimant's version of that conversation. It had been the claimant who at that point decided to resign in an

entirely unjustified reaction to the respondent's actions. It had been the claimant who sent a lengthy email on 11 October repeatedly referring to a decision to resign. It had been the claimant who decided not to return to work on 15 October 2018. It had been the claimant, who through a combination of words and conduct, resigned from her employment.

137. Her Dignity at Work complaint had been considered and rejected.

138. In short, a claimant had had the benefit of professional legal advice. She had elected not to lodge a complaint of alleged discrimination on grounds of race and nationality. She had elected not to seek an amendment of that claim of unfair dismissal. She had elected to continually argue that the existing claim already contained a claim of race discrimination when it clearly did not. The tribunal has no jurisdiction to determine any such claim. However, if it had such jurisdiction, that claim would have failed. There is absolutely nothing to support an allegation of unlawful discrimination on grounds of race and nationality, other than the claimant's repeated speculation without any evidential basis.

SUMMARY

139. The tribunal only has jurisdiction to determine the claim of alleged unfair dismissal. That claim is dismissed on the basis that the claimant had resigned and had not been dismissed.

If there had been a claim of constructive unfair dismissal, that claim would also have been dismissed for the reasons set out above.

If there had been a claim of alleged discrimination on the grounds of race or nationality, that claim would have been dismissed for the reasons set out above.

Vice President:

Date and place of hearing: 13 and 14 August 2019, Belfast.

Date decision recorded in register and issued to parties: