



EMPLOYMENT TRIBUNALS

Claimant: Mr R Longosz

Respondent: Crussh Retail Limited

Heard at: London Central (by CVP)

On: 5,6 and 7 November
2024

Before: Employment Judge Forde

REPRESENTATION:

Claimant: In person

Respondent: Miss S Ismail (Barrister)

JUDGMENT

The judgment of the Tribunal is as follows:

Notice Pay

1. The complaint of breach of contract in relation to notice pay is not well-founded and is dismissed.

Unfair Dismissal

2. The complaint of constructive unfair dismissal is well-founded. The claimant was unfairly dismissed.
3. The tribunal finds that the respondent did not unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and therefore it follows that it would not be just and equitable to increase the compensatory award payable to the claimant.

Reasons

Background

1. By way of a claim form dated 12 March 2024 the claimant pursues claims of unfair dismissal by way of constructive dismissal, redundancy pay and wrongful dismissal following either the termination of his employment by resignation or dismissal on 5 of January 2024.
2. The claimant resigned from his position of store manager on 3 December 2023 with his last day of employment being 14 January 2024. The claimant started ACAS early conciliation on 11 January 2024 and ACAS issued an early conciliation certificate on 13 February 2024.
3. The claimant started working for the respondent on 22 September 2023. Following a succession of promotions, he rose to the position of area manager on 27 May 2019. The claimant says that as an area manager he had responsibility and accountability for the stores under his control including their financial results and key performance indicator performance.
4. In his witness statement, the claimant identifies a number of events which ultimately led to a change within the respondent and a change to his role. The claimant complains that the change to his role from area manager to store manager amounted to a unilateral and substantial variation of his contract of employment and came about because his role of area manager had become redundant. He says that due to this redundancy, he should have been paid a redundancy payment in accordance with the law. He says that the unilateral variation of his contract is the basis upon which he pursues his claim of constructive unfair dismissal with the last straw arising when he was placed to work in the respondent's Bankside store. He says that he has not been paid the amount of notice pay he is entitled to.
5. The respondent says that the claimant's claim is misconceived. It says that the respondent made a number of organisational or structural changes which followed essential restructure changes which resulted in the claimant moving to a position which amounts to a natural progression from his role as area manager. The respondent does not consider the changes to the claimant's contract of employment and role to have been substantive enough to justify the claimant's classification of redundancy (see above). Consequently, the respondent says that the claimant rejected a role offered to him which was at least equivalent to his role as or area manager, and thereafter, progressed to another role which was a natural substitute for the role of area manager.

Procedural matters

6. Two matters of housekeeping fell to be considered during the hearing, one at the start of the hearing and the second at the start of day two of the hearing.
7. The tribunal had the benefit of a bundle of 308 pages containing key and relevant documents. Further, the parties had prepared a witness statements bundle containing the claimant's lengthy and detailed witness statement, and witness statements prepared on behalf of the respondent, namely Mr John

Carter, consultant, Mr Bulent "Billy" Mustapha retail operations director, Mr Jason Collins director and Mrs Kirsten Riddell consultant HR advisor. Miss Ismail informed the tribunal that Mr Collins would not be attending the hearing. Accordingly, and correctly, Miss Ismail identified that Mr Collins's witness statement was before the tribunal, and it was a matter for the tribunal as to what evidential weight should be placed upon it.

8. The claimant took issue with regards to the non-attendance of Mr. Collins. He said that he had prepared cross examination questions for Mr. Collins and that he took issue with regards to some of the content of the statement. I understood the claimant's objection to mean that he wanted Mr. Collins to attend the tribunal hearing. I explained to the claimant that it was a matter for the respondent as to whether it needs to rely on the evidence of Mr Collins and that I would apply such weight to the statement as I deemed appropriate. I explained that the respondent was seeking to draw evidence from Mr Collins's statement and that his absence was something that I would have to consider when giving weight to his evidence. The claimant explained that he was concerned that the statement would not be considered, and I explained that that was a problem for the respondent and not for him. I directed that I would not be making an order for Mr Collins's attendance at the hearing and that I would apply appropriate weight to the statement as I saw fit having given consideration to all of the issues in the claim and the evidence that I was about to hear. I saw no reason the hearing should be adjourned or delayed because of the non-attendance of Mr. Collins and accordingly, I directed that the hearing would go ahead.
9. During the course of his evidence, the claimant's allegations of misconduct on the part of the respondent became clarified. He explained that he was alleging that one of the respondent's employees, Daniel Holland, had assumed part of the claimant's role of area manager namely in relation to the facilities management of the respondents 8 stores that the claimant had previously had supervision supervisory management of. Further, it was clear that Mr Holland and another of the respondent's store managers had been promoted and it was the claimant's case made in evidence that he had not been offered the role that Mr Harris had been offered contrary to an assurance provided to him by Mr Carter by email on 13 October 2023 (located at page 209 of the bundle). In that email Mr Carter wrote:

"I fully appreciate you may view this to be a retrograde step however, I assure you that you will be invited to apply for any future management opportunities that will come with company expansion. I hope you will see engaging with this change helps the company to reset, rebuild and grow. Employing your skills and experience in store will enable you to make a positive contribution to the ambition to grow Crussh retail".
10. Miss Ismail on behalf of the respondent submitted that the claimant appeared to be putting forward a claim that he had not made out in his claim form or attachment. Accordingly, and if it was the claimant's submission that he was overlooked for the role taken by Mr Holland, the respondent should be allowed to admit evidence to rebut that contention and this would be by way of the

letter of appointment provided to Mr Holland within which it was stated that Mr Holland's salary on assuming the new position would be £35,000, considerably lower than the claimant salary at the time of £43,500.

11. The claimant's position was that he should have been offered the role. On that basis, I considered it to be in the interest of justice to ensure that both parties were on an equal footing to allow the admission of the document. I found that the issue identified had not been set out clearly in the claimant's pleadings and so it had not been addressed in the response nor had it been addressed in the respondent's evidence. I found that evidence as to the nature of Mr Holland's appointment on the 17 of November 2023 to be clearly relevant to the issues to be determined. I considered that in consideration of the balance of prejudice between the parties in terms of not admitting the document, I found that the prejudice lay against the respondent.

Witnesses

12. the claimant gave evidence first. I found the claimant to be a reliable, open and honest witness and at times compellingly so. He had a mastery of documents in the bundle. This allowed him to support what he said in evidence by reference to documents in the bundle.
13. However, I found that what his evidence was weakest in respect of the issues that were problematic in his case, such as the time taken for the claimant to obtain independent legal advice which he had first threatened to obtain in early June 2023 but should but which appeared to manifest itself for the first time in November 2023. While I accept that the claimant was addressing a different issue in November 2023 to the one that he said that he needed advice in respect of in June and July 2023, it is nonetheless my finding the claimant failed to provide an adequate explanation for his initial failure to find advice, notwithstanding the well-known difficulties in obtaining pro bono advice. The tribunal does not accept as a reason for the delay the claimant's inability to obtain time off from work.
14. Mr. Carter, Mr Mustapha and Mrs Riddell all presented as reliable, straightforward and honest witnesses. In the main, I had no reason to doubt the evidence that they provided to the tribunal.

Legal principles

15. The claimant claims constructive unfair dismissal, redundancy payments and breach of contract.

Constructive unfair dismissal and redundancy

16. By virtue of section 136(1)(c) of the Employment Rights Act 1996 ("ERA"), there is a dismissal when the employee terminates the contract with or without notice in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This section refers to those cases where the employer has committed or is threatening to commit a repudiatory breach of

contract, thereby entitling the employee under the law of contract to leave without notice. If the employee in fact leaves with or without notice, there is a constructive dismissal. The employer's reason for dismissal in a case of constructive dismissal is the reason for the employer's breach that caused the employee to resign. This, as I understand the claimant's case to be, is one of the limbs upon which he pursues his claim. He does this because as the Court of Appeal held in **Berriman v Delabole Slate Limited [1985] ICR 546, CA**, if the reason for the breach of contract fits the statutory definition of redundancy, then the employee will be deemed to be redundant.

17. Separately, a dismissed employee is only entitled to a redundancy payment if he or she has been dismissed wholly or mainly by reason of redundancy. Redundancy is defined by section 139(1) ERA 1996 and covers 3 broad scenarios namely closure of the business, closure of the workforce and where there is a diminishing need for employees to do the available work.
18. Section 95 of the employment rights act 1996 identifies the circumstances in which a claimer will be treated to be dismissed. 95(1)(c) is the relevant section in respect of constructive dismissals. As I understand it, the claimant it relies on a series of breaches of his contract of employment culminating what he considers them to be the final breach namely his placement into a store as store manager. He says that the respondent's conduct has breached the implied term of mutual trust and confidence. The legal test as confirmed by the House of Lords in **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) [1997] ICR 606, HL**, is a duty placed upon both parties that it will not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employee and employer.

The relevant statutory provisions

95 ERA 1996— Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) [...][1](#), only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(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.

136 ERA 1996.— *Circumstances in which an employee is dismissed.*

(1) Subject to the provisions of this section and [sections 137 and 138](#), for the purposes of this Part an employee is dismissed by his employer if (and only if)—

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

(b) he is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(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.

139 ERA 1996 — *Redundancy*

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

Issues to be determined

Constructive unfair dismissal

(a) Was the claimant constructively dismissed?

(b) The claimant resigned on three December 2023. The claimant says that the respondent's repudiatory breaches of expressed and implied terms of the employment contract and especially the implied term of trusting confidence caused him to resign. Those breaches were set out in paragraph 27 and 28 of the grounds of claim:

(c) unilaterally varying the claimant's role from area manager to retail store manager without his consent;

- (d) failing to undergo a fair and lawful redundancy procedure if his role as area manager was no longer required;
- (e) the claimant was made to do menial tasks and carry out the duties of a store assistant when he was working as a store manager and also moves to stores; new line lack of action to protect the claimant from stress, immense pressure and working considerable overtime whilst balancing 2/ 3 roles over the period June dash October 2023;
- (f) Delay in responding to the claimant's concerns/ queries/ complaints/ grievance;
- (g) Failure to protect him from the stress he was experiencing as per sub paragraph E above by delegating some responsibilities to other employees to assist him;
- (h) Failing to deal with the claimant's complaint sufficiently seriously, as required by the subject matter of the complaints;
- (i) Failing to properly record or log the complaints internally;
- (j) failing to implement a clear and intelligible grievance process and failing to follow its own grievance process. The claimant refers to the grievance procedure set out at schedule one of his contract of employment dated 28 May 2019 for the role of area manager;
- (k) failing to properly record and copy the claimant's formal grievance request to suitable employees;
- (l) Failing to deal adequately with the grievance;
- (m) Failure to deal with the claimant's grievance in accordance with the respondent's policy or the ACAS code of conduct;
- (n) The claim relies on the following breaches of the respondent's grievance and dispute procedure: clause 2.2 where a director and/or senior manager will deliberate on your grievance and inform you of the decision. The claimant refers to the grievance procedure set out at schedule one of his contract of employment dated 28 May 2019 for the role of area manager;
- (o) If the claim was dismissed was the dismissal a fair one in all the circumstances?
- (p) The respondent says that if the tribunal finds that they claim it was redundant within the meaning of section 139 ERA the respondent followed a fair process on the alleged reorganisation by offering alternative roles and the claimant would have been dismissed in any event (Polkey).

Wrongful dismissal

- (a) The claimant resigned on three December 2023 and gave six weeks' notice. The claim it was paid 214 January 2024 (but his last working day was 5 January).
- (b) If the claim was dismissed, is the claimant owed a further six weeks' notice pay dash being the balance of his twelve-week statutory minimum notice. The claimant relies on s.86 one ERA 1996.
- (q) The respondent says the claim was not dismissed and section (2) ERA 1996 applies and the claimant has given the requisite notice and is not entitled to any further payment.

Redundancy payment

The claimant said his demotion was because his role as area manager was redundant as per section 139 ERA 1996 and he is entitled to a statutory redundancy payment. The respondent says the change of role was due to a restructuring/reorganisation and the claimant was not redundant.

Findings of fact

19. I have not made findings of fact on all evidence heard during the course of the hearing. I have limited my findings to those related and relevant to the issues in the claim.
20. On 19 May 2029 the claimant was promoted from his position as store manager to area manager within the respondent's business as it was at that time. He was one of three area managers the other was being Gabriele Vincis, and Stephan Common. Between them, they had 34 stores of which the claimant covered 10 stores, and the others covered 12 each.
21. The onset of the pandemic in early 2020 appears to have had a devastating effect on the respondent's business. By the summer of 2022, the claimant had 8 stores under his control. That reduced to two by the autumn of 2022. Following the resignation of a number of colleagues, the claimant assumed some of their responsibilities including facilities management for the remaining 8 stores.
22. At the beginning of June 2023, Mr Vincis, head of retail operations on the claimants line manager left the respondent and shortly after, Mr Mustapha joined the respondent at its or as its operations director with a brief to focus on the business structure of the respondent and prepare a plan for growth in conjunction with Mr. John Carter, external operations consultant to the respondent. This was because the respondent had endured a number of significant financial difficulties. Prior to Mr Mustafa's involvement, a company known as Healthier Tastier Food Limited ("HTF") acquired the respondent then known as Crush Global Limited from administration on 10 January 2023. At the time of acquisition, HTF took on the existing employees of Crussh which included the claimant. The respondent was incorporated in April 2023 and the retail business including its employees were transferred across to it. The respondent acquired only eight of the 35 stores operated by a crush.
23. At the time of Mr Mustafa's appointment, the claimant was the only area manager. Following the transition which left the respondent with only eight stores, the claimant was personally managing just two stores namely the respondents Bevis Marks and Cornhill stores. The other six stores had been managed by Mr Vincis. When Mr Vincis left, Mr Mustapha took responsibility for his duties on an interim basis with a view to establishing a permanent solution within the body of the restructure plans that both he and Mr. Carter were exploring.
24. At a meeting that took place on 9 June 2023, Mr. Carter and Mr Mustafa met with the claimant. During this meeting they set out their plans for the growth in light of the departure of Mr Vincis. Mr Mustafa describes the claimant as being

positive and open to the plans discussed at the meeting. It was agreed that the claimant would provide a list of his duties as area manager to Mr. Carter and Mr Mustafa so that they could understand what he did and what changes that could be raised to his role. In evidence, Mr Mustapha said but he wanted to explore changes to free up more of the claimant's time so that he could spend time in driving the changes required in conjunction. From Mr Mustapha's point of view, it was important to retain the claimant's knowledge and expertise within the respondent given that he was a long serving employee of the respondent, had contacts with many of the respondent's important suppliers and business connections, and have irreplaceable knowledge of the respondent's trading historical trading history such as menus.

25. The three men met again on 12 June 2023. The outcome of that meeting was that the claimant was to provide more detail in terms of his typical duties which he duly provided that information the same day.

26. A further meeting took place with the claimant on 12 July 2023. During this meeting he was offered a new role, that of retail stores manager. The rationale behind the offer of the new role is set out in Mr Mustapha's witness statement and is set out below:

“Following our review of his list, it was clear to us that his role needed to adapt to the needs of the business, especially as there were fewer stores to manage, and the focus of the business had changed. We determined that his skills, experience and time could be put to better use in these new circumstances.

The claimant had worked for the business since 2005, so it seemed appropriate that his experience be used in a more senior capacity to work towards future growth plans. As a result, we created a new role of retail stores manager which was effectively an offer of a promotion to the claimant as it was more senior and had an increased salary.”

27. They met with the claimant again on 12 July 2023 to explain this and to make an offer of retail stores manager role to him. Here, Mr Mustafa says:

“John and I believed that this would be met with the same positive response as our previous discussions with the claimant about proposed changes to his role, particularly as the necessary changes were beneficial to the advancement of his career with the respondent.”

And further:

“The claimant seemed fixated on the new job title being similar to that of a store manager which, as the position that directly reported to him as an area manager, he viewed our offer as one step below and therefore a demotion. He was also unhappy with the increased salary of £43,500 offered with the role as compared to that of head of retail operations which Mr Vincis had held prior to the administration of the respondent and in respect of which he had been paid £55,000.”

28. The claimant's reflection on this meeting differs from that of Mr. Carter whose recollection aligns with Mr Mustafa. The claimant says that the job description provided to him in respect of retail sales manager contained all of the duties that he had been doing up to that point including absorbing aspects of Mr Vincis's role. By this time, the claimant says that he was overworked and needed a change to his role to enable him to perform. He felt that the role being offered to him was inadequately remunerated and sought to negotiate an increase on the £43,500 being offered. The claimant says that he challenged Mr. Carter as to whether or not the new role could be forced upon him and says that in response Mr. Carter replied that he could do whatever he wanted to because he was a director of the business, something that Mr Carter refutes saying. The claimant also challenged the job title having formed the view that it was a more junior position to the one that he had been holding. He says that he wanted to first do some research and think about it. Further, and it is accepted by the parties that the claimant was not given a deadline by which he was to agree to the change being proposed.
29. Mr. Carter describes the claimant's response to the offer as very negative. It is Mr Mustafa's evidence that the new role being offered to him would provide him with an opportunity of reporting directly to Mr Mustafa as well as working closely with the other directors of the business. He says that it would have meant increased responsibilities, increase salary and ultimately an opportunity to utilise the claimants experience to assist in driving the growth of the respondent through increased sales. Mr Mustafa says the claimant wanted to seek advice at this time and that his salary expectations were at least £50,000. Mr Mustapha said that he would leave matters there and await the claimant decision as there were no further discussion to be had about increasing the salary offer.
30. It is the tribunal's finding that the accounts provided by Mr Mustapha and Mr. Carter are preferred to the account provided by the claimant here. It is undisputed between the parties that the respondent had recently endured a torrid and turbulent period in its trading history resulting in a substantial reduction in the number of stores it operated. In cross examination, Mr Mustafa was able to provide more colour to the difficulties that the respondent was going through including difficulties with landlords and a loss of trust among the respondent's suppliers as a result of the administration that the previous incarnation of the respondent had gone through. The tribunal accepted Mr Mustafa's evidence that he had been brought into the business to develop it and grow it. Further, the tribunal accepts Mr Mustafa's evidence that he saw working in conjunction with the claimant as an opportunity to realise his objective.
31. Mr Mustafa is not someone who utilises e-mail extensively. He prefers using the telephone or WhatsApp messaging. This is not a criticism of him. He explained to the tribunal that he prefers to have interpersonal contact with the people he works with. He was clear that he did not want to be seen as the claimant's boss rather his work colleague. I make mention of Mr Mustafa's preferred communication styles because he says that he chased the claimant for a response and decision on the offer made to him. This he says was done

by telephone. The claimant disagrees saying that he did not have any contact with the respondent and so he was prompted to write to Mr. Carter On 21 August 2023. The claimant's delay in writing the response is justified by him having to work long hours, more than his contractual hours as a result of undertaking additional duties following the departure of Mr Vincis. However, it emerged in cross examination the claimant was contracted to work five days a week, Monday to Friday. No evidence was presented to me that would have indicated that the claimant was unable to have addressed his mind to the task at hand earlier than he did.

32. The e-mail to Mr. Carter expressed the claimant's disappointment with the job title offered to him and again focused on pay. To my mind, and upon reading this e-mail, I formed the very firm view that the claimant's approach to this negotiation as he saw it was entirely consistent with Mr Mustafa's observation of the claimant in that he was fixated on a title and salary. I find but the claimant was offered the opportunity of renaming the role and at the role of retail sales manager was to be very different to the one of area manager. I formed this view based on Mr Mustafa's evidence that he introduced a number of third-party suppliers of services which would have resulted in a reduction in the claimant's work commitment, in other words reducing the amount of time he would have been required to work.
33. I find, on the balance of probabilities the claimant's preoccupation or fixation on salary and title blinded him to the totality of the offer being made to him with regards to the position of retail sales manager.
34. Mr. Carter referred the matter to Mr Mustafa who was away on annual leave at the time I have returned to work On around 27 August 2023. The matter then went on hold while other issues within the respondent were attended to by Mr. Carter and Mr Mustapha. During this time, the claimant was on leave between 23 September and 9 October 2023.
35. It is my finding that in this period up to 9 October 2023, Mr Mustafa primarily and Mr. Carter reasonably reached the view that the claimant was no longer required to fulfil a retail stores manager role. Further, the respondent had formed the view but having had three months in which to accept an offer, the claimant had simply not communicated his acceptance. Given these factors, the respondent reached the view that there was no need for the proposed retail stores manager.
36. During the course of a meeting on the 13 October 2023, the claimant was informed of the respondent's revised view which meant that the role that had been offered to him was withdrawn. Further, Mr. Carter set out the details of a revised store manager role which would entail some facilities management. In so far as his core work conditions were concerned, the claimant would have no changes save that he would be based in one store and part of the store team providing service to customers. In time, the claimant was located at the respondent's Bankside store. The claimant highlights this as a significant factor behind his resignation because he says that he was one of two members of staff on duty at any time in the store I would have to undertake what he

described as menial tasks, below his work potential such as cleaning, preparing porridge and smoothies, taking in deliveries.

37. It is the claimant's case that the this change of role was a demotion, something that was denied by both Mr. Carter and Mr Mustafa. In an e-mail dated 16 October 2023, Mr. Carter emailed the claimant to confirm that his role was transferring to that of store manager with Some additional responsibilities. Further, Mr. Carter observes:

" I fully appreciate you may view this to be a retrograde step however, I assure you but you will be invited to apply for any future management opportunities that will come with company expansion. I hope you will see engaging with this change helps the company to reset, rebuild and grow. Employing your skills and experience in store will enable you to make a positive contribution to the ambition to grow Crush retail."

38. It is my finding that in highlighting the possibility that the new role of store manager might amount to a retrograde step, Mr Carter has accentuated the obvious which is that it is of course a retrograde step or to give it another description, a demotion. It is a demotion that has come about as a consequence of the respondent's restructure and reorganisation which resulted in a large part of the retail stores manager role being divided between Mr Mustapha and store managers.

39. Further, it is my finding that the role of area manager and the role of retail sales manager are quite similar but very different from the role of store manager. It is my finding that the roles of area manager and retail sales manager clearly provide for an overarching responsibility for the performance of the respondent's retail stores and require very different things to be done in order to perform the role. The store manager's responsibilities, while incorporating facilities management for an individual store do not require the level of skill, experience and expertise all the other roles. Given that I find area manager and retail sales managers to be very similar roles, and substantially different to the store manager's role, it is my finding without the decision to move the claimant two store manager on the 13th of October was a move to a different job altogether From the one that he had been performing.

40. I accept the evidence of Mr Mustafa and Mr. Carter that the role of area manager no longer existed. There was no longer a need for the role to be performed. I also find that the claimant was given no option but to accept the role of store manager. There is no doubt by this point the claimant was deeply aggrieved by what I shall describe as his reversal of fortune here. But it is also my finding the claimant had been offered the opportunity of a promotion which he had consequently spurned by his own prevarication. It is my finding that the IT should have been obvious of the claimant that the respondent needed to make changes, and that change was afoot. I find that the claimant did not do enough to progress the opportunity presented to him and that he had not accepted the offer made to him on 12 July 2023. It is my finding that as a matter of law, the claimant made a counter-offer to the respondent which was rejected. Ordinarily, that would mean the offer was no longer available to the

claimant to accept but it is my finding that the offer remained open for him to accept.

41. While it is clearly regrettable that the respondent was unable to engage with the claimant during the extended period identified above, it is my finding that neither party is entirely to blame for the delay and that there were a myriad of circumstances going on which affected the responsiveness of the parties. However, the delay arising from the claimant's prevarication over the offer made to him meant that by October the respondent had decided to withdraw the offer it had made to him in July. The result of this change was that the claimant was forced into performing the store manager role. Mr. Collins wrote to the claimant on 20 October 2023 following a meeting between the two. Mr Collins records that the claimant verbally advised him that he would not be accepting the role of store manager. In his e-mail, Mr. Collins sets out that the store manager role is a suitable alternative position (without and explanation as to why that is the case) and, therefore, the claimant was not entitled to any redundancy payment. The claimant was given a matter of days to communicate his acceptance of the new role.
42. The claimant accepted the role under protest and communicated this to Mr. Collins by way of e-mail on 23 October 2023, Mr. Carter, Mr Mustafa, and Mrs Riddell copied. In his e-mail, the claimant indicated that he intended to raise a grievance in respect of the way in which he describes:

“..... the whole situation is being conducted has had negative effect on my well-being, increased my stress levels, and it is affecting my professional and personal life”.
43. Mrs Riddell replies by first pointing out that his e-mail fails to articulate fully the details of his concerns, Mrs Riddell nonetheless responds in detail to the claimant on the 27 October where she indicates that she undertook an investigation in respect of the concerns that he raised in his e-mail. What the letter amounts to is a recitation of the respondent's position throughout and it is mine finding but this is not a grievance outcome but it is an explanation as to why the claimant has been offered the role of store manager. The claimant responded on the 31 of October when amongst other things, he asked for more time and explained that he would be seeking professional advice as he had done previously. Thereafter, Mrs Riddell and Mr Bashir the claimant's lawyer engaged in correspondence.
44. It was Mrs Riddell's evidence that the claimant started his new role as store manager on 17 November 2023. Around this time he was sent new terms of employment which remain unsigned.
45. On 3 December 2023, the claimant informed Mrs Riddell that he was resigning from his employment and did so on the basis that his employment had changed unilaterally, forcing him out of his employment.
46. It is my finding that the claimant's demotion to store manager and thereafter his placement in the respondent's Bankside store amounted to fundamental

breaches of the claimant's contract of employment as a result of unilateral variation to his contract. It is my finding that the roles of area manager and store manager are fundamentally different from each other.

47. Further, while it is clear that there was a relatively short period of around 3 weeks where the parties were engaged in correspondence first by way of a grievance investigation and outcome and thereafter, communication between Mrs Riddell and Mr Bashir, I do not consider this time to have been an Inflexion of time which would amount to the claimant accepting the variation to his contract. Consequently, I find that on the facts the claimants claim of constructive unfair dismissal to be made out and succeeds.
48. I find that that the variation to the claimant's contract which resulted in his dismissal came about because his role became redundant within the meaning of section 139(1)(b) ERA 1996 on the basis that I find that fewer employees were needed to do the work that the claimant did. In reaching my finding, I accept the evidence of Mr Mustafa who said that through a number of changes including the use of new suppliers and smarter ways of working, the need for the claimant to perform the role of area manager diminished to the point that Mr Mustapha and store managers could undertake the work that the claimant once did. Given my finding as to the point in time when the claimant was dismissed I do not find that there was a role available to the claimant which was equivalent or alternative.
49. In reaching this finding, I accept the claimant's evidence that the role of store manager was materially and significantly different from that of area manager. I find that the change amounted to a demotion. In reaching this finding, I find that while Mr Carter, Mr Mustafa and Mrs Riddell assert that the change was not a demotion none of them have been able to explain with any cogency or reliability why they have reached this finding. I find that while Mr Carter's email to the claimant in which he is informing him of the change is carefully worded it nonetheless cannot avoid stating the obvious when it refers to as retrograde steps because that is the very thing that had happened to the claimant, namely that he was subjected to a retrograde step and one that I find to be material and fundamental. I find this change to amount to a fundamental breach of the contract of employment.
50. In evidence the claimant was able to review the differences between the two roles and I was able to assess for myself the differences between the roles from the job descriptions contained within the bundles. I find what the respondent's witnesses had to say about the similarity of the roles to be unrealistic. I noted that when all of the witnesses made this point that none were able to describe in any detail the extent to which the two roles were similar whereas the claimant was able to and did so largely unchallenged.
51. It is my finding that the claimant did not raise a formal grievance. At the same time, and while it is argued by the respondent that Mrs Riddell's correspondence with the respondent amounted to agreement outcome, I do not consider there to have been a grievance outcome for the reasons I have given previously. For this reason, the claimant's complaint in relation to the

grievance he believes he made and indeed matters concerning alleged non-compliance with ACAS guidelines are not well founded and are dismissed.

52. The claimant's claim of breach of contract or wrongful dismissal is unfounded and does not succeed. The claimant has received what he is entitled to receive from the respondent. His contract says that he is entitled to be paid six weeks' notice.
53. In light of my findings, I am bound to point out that it is my finding that the respondent mis-directed itself in terms of its interpretation of the circumstances it was confronted with and wrongly assessed that the claimant was not redundant as a consequence of the changes it made. I find that if the respondent had correctly assessed what was happening it would have determined that the claimant was effectively redundant by 20 October 2023 as a result of its restructure..
54. The parties are aware that the hearing before me was to determine liability only. A further hearing will be scheduled to deal with remedy. I am hopeful but what I have set out in this judgement will assist the parties in terms of assessing quantum going forward. Notwithstanding, directions will follow.

**Employment Judge Forde
18 November 2024**

Judgment sent to the parties on:

22 November 2024

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For the Tribunal: