

Failure to greet a colleague could lead to a constructive dismissal claim

In the recent case of *Hanson v Interaction Recruitment Specialists Ltd* an Employment Tribunal found that a failure to say “hello” to a colleague was conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Whilst the conduct by itself was not a fundamental breach of contract, it contributed to a breach which led to an employee’s constructive dismissal.

What happened in this case?

The Claimant worked for a recruitment business, which was bought by Interaction Specialists Limited (**Interaction**) on 15 September 2023 after the business went into administration. Mr Gilchrist was the owner and director of Interaction.

On 20 September 2023, Mr Gilchrist went to the office to meet the Claimant, Ms Smith and Ms Waite (who both reported to the Claimant). In response to Mr Gilchrist asking if there were any issues, Ms Smith said there were only two members of staff working in the office and they were under pressure, which sparked discussion about the Claimant’s working patterns. She explained that she sometimes worked from home but would also work onsite at clients’ offices, sometimes for weeks at a time. Mr Gilchrist formed the view that the Claimant was really leaving the work to Ms Smith and Ms Waite to do.

On 26 September 2023, Mr Gilchrist visited the office unannounced. The Claimant arrived late as she had been at a medical appointment. When she arrived, she said “*good morning*” to Mr Gilchrist three times, but he ignored her. Mr Gilchrist then berated her for being late. When she tried to show him her phone with the evidence of her medical appointment, he pushed the phone away and told her “*I suggest if you don’t want to be here that you leave*”. After this incident, Mr Gilchrist emailed Ms Smith and Ms Waite telling them that they were getting a pay rise, without having consulted the Claimant about this in advance. Later that afternoon, Mr Gilchrist sent another email to Ms Smith saying it was “*good to see [the Claimant] getting stuck in today*”.

On 2 October 2023, the Claimant resigned saying that Mr Gilchrist had made her feel undervalued, including by ignoring her, suggesting that she should leave her job and undermining her to members of her team. She brought a claim for constructive dismissal.

What is the law?

To establish a constructive dismissal claim:

- there must be a breach of the employment contract by the employer;
- that breach must be a fundamental breach going to the root of the contract so as to entitle the employee to terminate the contract without notice; and

- the employee must resign in response to the breach, without affirming the contract.

It has been established in case law that it is an implied term of the contract of employment that the employer will not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

It has also been established that individual actions that do not by themselves constitute fundamental breaches of any contractual term may have a cumulative effect of undermining the relationship of trust and confidence.

What was decided?

The Tribunal found that the Claimant had been constructively dismissed and that there was no reasonable and proper cause for Mr Gilchrist doing the following things:

- ignoring her when she arrived at work, despite her greeting him three times;
- refusing to look at her phone or listen to her explanations regarding her medical appointment;
- telling her to leave if she did not want to be there;

- offering pay rises to her direct reports in the way that he did; and
- sending the email to Ms Smith regarding the Claimant getting “*stuck in*”.

The Tribunal found that, taken together, these matters amounted to a fundamental breach of contract and undermined the relationship of trust and confidence between the Claimant and Interaction, such that she was entitled to terminate the contract without notice.

The Tribunal accepted that the Claimant had resigned in response to the way Mr Gilchrist had treated her, and Interaction had not suggested that she had affirmed the contract.

What does this mean for employers?

This case highlights that seemingly minor incidents, such as a manager not saying “*hello*” to someone, can have a big impact.

Often, situations where an individual feels that someone has behaved in a rude or disrespectful manner towards them, particularly in front of others, can be the most upsetting to them.

This case also serves as a reminder that multiple incidents of a relatively minor nature could, together, amount to a fundamental breach of the employment contract and expose the

employer to liability for constructive dismissal.

Having a positive workplace environment may largely combat this risk. It is also important to have an awareness of this risk when conducting investigations, such as grievance investigations where the employee has made multiple complaints that could be regarded as minor, or where complaints about the repeated conduct of a particular individual have been made.

[Hanson v Interaction Recruitment Specialists Ltd](#)

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