



EMPLOYMENT TRIBUNALS

Claimant: Mr. M. O. Erinle

Respondents: (1) The Church of the Lord (Aladura)
(2) Mr E Gbogboade
(3) Mr R Ositelu
(4) Ms M Ositelu
(5) Ms M Cullen
(6) Mr Y Boake

Heard at: London South

On: 2nd, 3rd, 4th, 5th, and 6th October 2023

Before: Employment Judge Sudra

Representation:

Claimant: Dr. M. J. Pelling (lay representative)

Respondent: Ms. N. Mallick of Counsel

(References in the form [XX] are to page numbers in the Hearing bundle. References in the form [XX,para.X] are to the paragraph of the named witness's witness statement)

RESERVED JUDGMENT

The decision of the Tribunal is that,

- (i) The Claimant's complaint of ordinary unfair dismissal succeeds.
- (ii) The Claimant's complaint of wrongful dismissal succeeds.

- (iii) The Claimant's complaint of unlawful deduction from wages in respect of unpaid pension contributions succeeds succeeds.

REASONS

1. This matter was listed for a Final Hearing from 2nd to 6th October 2023 for liability and remedy. The Claimant was represented by Dr. Pelling and the Respondent was represented by Ms. Mallick. The Tribunal apologises for the delay in this judgment being sent to the parties.
2. The Claimant began Acas early conciliation on 23rd October 2020 ('Day A') and was issued with an Acas early conciliation certificate on 23rd November 2020 ('Day B'). On 22nd December 2020 the Claimant presented his ET1 claim form and the Respondent defended the claims by way of an ET3 and Grounds of Resistance on 24th February 2021 and amended Grounds of Resistance on 9th June 2022.

The Issues

3. The Claimant's claims are for:
 - (i) Ordinary unfair dismissal; or
 - (ii) constructive unfair dismissal.

An agreed List of Issues was contained within the Case Management Order of Employment Judge Wright [375] and agreed with the parties at the outset of the Hearing. It is as follows:

'8. The matters to be determined at the final hearing are:

8.1. Was the claimant dismissed?

8.2. If so, when?

8.3. What was the reason?

8.4. If the claimant was not expressly dismissed, was he constructively dismissed?

It is not in dispute that R1 informed the claimant that he was to transfer to Nigeria:

8.4.1. Did R1 in transferring the claimant to Nigeria breach the implied term of mutual trust and confidence?

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

8.4.2.1. whether R1 behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and R1; and

8.4.2.2. whether it had reasonable and proper cause for doing so.

8.4.3. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

8.4.4. Did the claimant resign in response to the breach by words or actions? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

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

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

8.6. Was it a potentially fair reason?

8.7. Did R1 act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

8.8. There is a wrongful dismissal claim (the claimant is to confirm what he says his notice period was and what sum he is claiming). Was the claimant guilty of wrongdoing such that he breached his contract and was not entitled to a notice payment or to work his notice?

8.9. There is a claim of unauthorised deductions from wages in respect of sums the claimant says were deducted, which were not paid into his pension fund. The claimant is to itemise these sums.

~~8.10. The claimant has referred to a failure to provide him with an itemised pay statement until 1/11/2016. As his claim was presented on 2/7/2021 and in the absence of any application by the claimant to extend time, this claim is out of time under s.11(4) ERA.¹~~

8.11. The claimant refers to the sums being paid to him not equating to the payslips provided. It is not clear what the legal basis of his claim is in this regard. If he says he was underpaid and that amounts to an unauthorised deduction from wages, he will need to itemise each and every deduction by reference to the sum he says was due and the date the payment was made.

8.12. The claimant is to provide the information as set out in this paragraph 8 by the **31/5/2023**.

9. Remedy - matters to be considered as part of remedy are:

9.1. What application does s.124 (1ZA) ERA have?

9.2. How many hours a week did the claimant work? The claimant says he worked 50 hours per week, ~~with the result that he was not paid the national minimum wage²~~. The respondent says that the claimant worked 10-15 hours per week.

9.3. Both sides agree the claimant was paid a gross monthly wage of £1,200 (the

¹ Withdrawn by the Claimant [481, para. 8.10].

claimant states his net monthly pay was £1,059.44).

9.4. Was there an unauthorised deduction from the claimant's wages in respect of the pension payments? If so, what sum?

9.5. Was there an unauthorised deduction from the claimant's wages in respect of a shortfall in salary paid?

9.6. If the claimant was wrongfully dismissed, what notice period and rate of pay is he entitled to?

Procedure and Documents

4. The Tribunal had before it:

- (i) A Hearing bundle of 483 pages;
- (ii) two supplementary bundles for the Claimant of 19 and 28 pages respectively; and
- (iii) various annual returns and accounts provided by the Claimant.

5. The Tribunal had witness statements from:

For the Claimant

- (i) The Claimant;
- (ii) Margaret Oshingbule;
- (iii) Mary O. Owolana; and
- (iv) Catherine Kamara;

For the Respondent

- (v) Emmanuel Gbogboade;
- (vi) David Fabusoro;
- (vii) Omotayo Fawole;
- (viii) Yaw David Boake;
- (ix) Betty Mary Odunsi; and
- (x) Elijah Olusegun Akinwande.

6. The Claimant and Respondent made written closing submissions at the conclusion of the evidence.
7. The Tribunal notified the parties at the outset of the Hearing that it would only read documents that it was specifically referred to and would only read documents referred to in witness statements insofar as they were relevant.

Findings of Fact

8. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.
9. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.
10. The First Respondent² is an international church and charitable organisation originating in Nigeria and with branches worldwide. Respondents Two to Six are trustees of the First Respondent (an unincorporated association). The First Respondent's UK headquarters are located at, 25 Surrey Square, London.

Claimant's Roles with the First Respondent

11. On 10th May 2006, the Claimant was appointed by the First Respondent as a part-time unpaid minister-in-charge of its Birmingham (UK) branch. Following

² In this judgment referred to as 'the Respondent.'

his service in this role, the Claimant was ordained by the First Respondent [51], on 17th December 2006, and appointed to be a full-time paid minister-in-charge of its Birmingham (UK) branch. The Claimant's employment with the First Respondent commenced on 1st January 2007 to work 40 hours per week 10.00am to 6.00pm Monday to Friday [53], [101].

12. The roles the Claimant held with the First Respondent, including the locations, were: Full-time paid minister-in-charge at the Ladywell branch in London from 23rd September 2007 until 22nd September 2008 and at the 25 Surrey Square branch, London (concurrent); full-time paid minister-in-charge at the Rhode Island (USA) branch from 23rd September 2008 until 3rd December 2009; full-time paid minister at the 25 Surrey Square branch, London from 4th December 2009 until 30th April 2010; full-time paid minister-in-charge at the Birmingham branch from 1st May 2010 until 2nd March 2014; full-time paid minister-in-charge at the North London and 25 Surrey Square branch from 3rd March 2014 until 14th January 2020 (concurrent); full-time paid minister-in-charge at the Deptford branch from 15th January 2020 until 10th December 2020; and full-time paid minister-in-charge at the Birmingham branch from 11th December 2020 until 8th March 2021.

13. It is surprising that neither the Claimant nor the First Respondent have the Claimant's original contract of employment. There is a contract of employment contained within the bundle [52] but it is a photostat copy with no details of the Claimant.

Building Fund

14. Each branch of the First Respondent either owns the freehold of the building or has a lease to rent premises for the purposes of holding church services. For reasons of economy and stability, the branches of the First Respondent whom rented or leased premises, were encouraged to raise capital to purchase freehold premises. This was done via donations and fund-raising activities. Monies raised were not held in a central fund but each branch managed and had their own building fund. The North London branch ('the Branch') of the

First Respondent had their own building fund which had been steadily built up by donations and collections and by 2019, totalled approximately £57,000.

15. In 1997, the Branch deposited its then funds into an account with the Charities Official Investment Funds ('COIF') managed by the Churches, Charities and Local Authorities ('CCLA') investment management organisation. This was done on the advice of Dr. Michael Pelling³. The two signatories of the CCLA account were, the Claimant and Margaret Oshingbule (Christian Minister).
16. In 2019 Rufus Ositelu (Third Respondent ('Primate')) wanted all of the First Respondent's branches in the UK to deposit the funds they had collected (toward purchase of a freehold building) into one single account or fund, which they were asked to do. This instruction aroused suspicion in the Branch. The Branch members were not convinced that the money they had collected over the years, would be available to it in full when it was needed and that Mr. Ositelu would be able to allocate the monies in a central fund as he wished.
17. The Branch requested a meeting with Mr. Ositelu to discuss his plans for a central fund and to air their concerns. A meeting occurred in or around September/October 2019 but the Claimant was not in attendance. The 'two sides' (on the one hand, Mr. Ositelu wanting one central fund of monies and on the other, the Branch wanting to retain control over their building fund) could not reach a mutually acceptable agreement and arrived at an impasse. In order to resolve matters the Branch stated that it would not hand over all of the monies they had collected but would agree to pay the sum of £10,000 in to the proposed central fund. Mr. Ositelu rejected the offer and was resolute that the Branch hand *all* the monies from their fund over so that it could be pooled with monies for the other UK branches of the First Respondent. The Branch did not agree to do this and the meeting ended.
18. The outcome of the meeting was communicated to the members of the Branch. This stoked further suspicion and it was decided that they would not accede to

³ Dr. Pelling was the Claimant's lay representative in these proceedings.

Mr. Ositelu's request. At the same time, the Branch members decided that their fund was not attracting sufficient interest in its present investment vehicle (the CCLA account) and therefore, should be re-invested elsewhere. Until a suitable alternative for investment could be found, it was decided to place the proceeds of the CCLA account into a NatWest bank account. The Claimant agreed to do this and it could have only be done with his consent as he was a signatory of the CCLA account.

19. This transfer form for the funds to be moved from the CCLA account to a NatWest bank account was signed by the Claimant and Ms. Oshingbule on 23rd December 2019 with the actual transfer occurring on 16th January 2020. On 29th October 2020, the Claimant and Ms. Oshingbule signed a further withdrawal form for the sum of £7,339 to be transferred from the CCLA account to the NatWest account referred to above; the transfer was effected in or around November 2020.

20. The Claimant did not inform anybody at the First Respondent's London headquarters that monies had been transferred from the CCLA account to the NatWest account. The totality of the transfers was in the sum of £57,339.00p. On 1st May 2020, the committee of the North London Branch signed a cheque in the sum of £50,000.00p made payable from its NatWest account to the Universal Prayer Group Housing Association. A further cheque was made out to the Universal Prayer Group Housing Association on 6th November 2020 in the sum of £7,340.00p [243]. The cheques were signed by Margaret Oshingbule (Christian minister) and Mary Owolana (treasurer of the Branch). The monies paid to the Universal Prayer Group Housing Association were to be invested on the Branch's behalf and a loan agreement was signed on 31st December 2020 between the caretaker committee of the Branch and Universal Prayer Group Housing Association [244]. Prior to issuing the aforementioned cheques, the Branch did not inform the Respondent of its intention to make an investment nor was its permission sought.

21. On 24th September 2020, the Respondent held a meeting with the ministers of its UK branches. At this meeting the Primate discussed the planned

centralisation of the building funds of the UK branches. The Claimant stated that the Branch members had agreed to reinvest their building fund monies as the branch members did not agree to hand over their funds to a centralised building fund account which would be administered by the First Respondent. The Claimant was asked to inform his Diocesan Bishop of the whereabouts of the Branch building funds within 48 hours.

22. On 26th September 2020 the Claimant provided a report in respect of the Branch building fund monies [262]. In his report, the Claimant stated that he was *'not aware of the money's current whereabouts'* and that he was unaware of *'what happened to the money after it left the CCLA account.'*

23. On 11th October 2020, Dr. Pelling was elected on to the committee of the North London Branch in the capacity of 'Branch Legal Advisor.'

24. David Fabusoro (Archbishop) wrote a letter to the First Respondent's ministers, on 14th October 2020, advising them of a planned re-structure of some of its UK branches. Archbishop Fabusoro stated that the North London, Deptford and Westbourne Park branches would be merged into a single branch. The members of the Branch were not pleased with this proposal and arranged a petition in which their objection to the plan was detailed [267]. The petition was presented to the First Respondent's Diocese Executive Committee ('DEC') at a meeting on 17th October 2020 by Dr. Pelling. Within the petition, the members of the Branch also raised the issue of the transfer of their building fund to the Respondent's centralised account. It was stated that the Respondent were not acting in 'good faith' and that their motives were suspicious. Whilst the Claimant was not a signatory on the petition, members of his family (wife, son, and daughter) were; as was Dr. Pelling. Therefore, the Claimant would have been aware of the content of the petition.

25. A few days prior to the DEC meeting (14th October 2020), the Claimant drove Dr. Pelling to visit Rev. James Hill, the vicar of St. Jude and St. Paul's church in North London, to deliver a letter. The Branch had a licence with St. Jude and St. Paul's church to use the side hall for its own purposes. The letter delivered by the Dr. Pelling informed Rev. Hill that the Branch's committee wished to

terminate the licence and retrieve its property from the premises. This was done without informing the Respondent or seeking its agreement to terminate the licence. The Claimant had driven Dr. Pelling to deliver the letter to Rev. Hill and knew of the letter's contents and the purpose for which he was taking Dr. Pelling to Rev. Hill's church. The letter contained the Claimant and Dr. Pelling's contact details. The reason for the termination of the licence with St. Jude and St. Paul's church is so that the Claimant and committee could set-up their own church in a location of their choice. Rev. Hill informed Emmanuel Gbogboade (trustee and minister of the First Respondent) of the letter and termination of licence. Dr. Gbogboade considered this to be an act of gross misconduct by the Claimant.

Missing Funds

26. In or around April 2020 the Respondent discovered that a £50,000.00p fund transfer had been made from the CCLA account to an unknown account. Prophet Adeeko (of the Respondent) queried the transfer with the Claimant who responded that he had 'nothing to say.' On 10th June 2020 the Late Margaret Cullen (secretary) spoke to the Claimant regarding the transferred monies and requested copies of bank statements. The Claimant denied, wrongly, knowing anything about bank statements as he had been transferred from the Branch.

27. On 24th March 2020, Archbishop Fabusoro wrote to the Claimant asking him to confirm that the £50,000.00p fund transfer would be returned to the CCLA account. The Claimant responded to Archbishop Fabusoro on 27th April 2020 stating that, *'Since leaving, I have no knowledge of the branch's financial activities. Due to this, I do not have the power or the authority to return money I do not have.'* Archbishop Fabusoro again wrote to the Claimant on 29th April 2020, asking who the signatories to the CCLA account were and who were authorised to effect a transfer of monies. The Claimant responded, with very limited information, on 1st May 2020 [258].

28. The Claimant attended a meeting with ministers held by the Primate on, 24th September 2020. The issue of the missing £50,000.00p fund transfer was

discussed and the Primate asked the Claimant of the whereabouts of the monies. The Claimant stated that whilst he had signed the first transfer (of £50,000.00p) he had not signed the second transfer of some £7,000.00p. This was not true. The Claimant was asked to trace the whereabouts of the money and report back to the Diocesan Bishop within 48 hours. The Claimant did report back, on or around 25th/26th September 2020, stating that he was unaware of where the monies currently were.

29. On 10th December 2020, Dr. Gbogboade wrote to the Claimant informing him that he was raising a '*formal investigation with the bank,*' (for what the Respondent considered to have been a perpetrated fraud) and posed a series of questions to the Claimant. The Claimant was also asked to provide a detailed explanation as to his involvement in the attempt to terminate the licence with St. Jude and St. Peter's church on 13th November 2020 [284]. The Claimant was clear that an allegation of fraud was being made and confirmed this in his oral evidence.

30. The Claimant responded to Dr. Gbogboade on 16th December 2020 [285]. The Claimant, in his letter, stated that he had not requested a withdrawal of £7,339.00p but this was not true as he had co-signed the withdrawal form. The Claimant also addressed the issue of the termination of the licence with St. Jude and St. Peter's church. The Claimant said that he only accompanied Dr. Pelling to see Rev. Hill in order to deliver a letter as he knew his address '*from memory*' but had no idea about the contents of the letter or what was discussed. This is not plausible. The Claimant knew when he took Dr. Pelling to deliver the letter to rev. Hill that the purpose of the visit was in respect of termination of the licence.

31. On 11th February 2021, Dr. Gbogboade wrote to the Claimant in respect of the transferred funds and suggested that his denial of knowledge of the transfer of the funds was incorrect. Dr. Gbogboade informed the Claimant that whilst the matter could be reported to the police, he wanted to give the Claimant an opportunity to '*rebut the evidence*' and invited the Claimant to attend an investigation meeting on 18th February 2021. The Claimant responded to Dr.

Gbogboade, on 15th February 2021, stating: That he did sign the transfer for the sum of £50,000.00p; he had also signed the transfer for the sum of £7,339.00p (which the Claimant acknowledged that he had previously denied doing); and that he *would* attend the proposed investigation meeting on 18th February 2021 on the strict condition that he can be accompanied by his chosen legal advisor (Dr. Pelling).

32. However, on 18th February 2021 the Claimant sent Dr. Gbogboade an email stating that he would not be attending the meeting planned for that day as the First Respondent had not indicated that they had no objection to Dr. Pelling accompanying the Claimant, he would be unable to attend an on-line meeting, and that the Respondent may be turning the meeting into a '*kangaroo court*.' As stated in his email, the Claimant did not attend the meeting on 18th February 2021.

Posting to Nigeria

33. The Primate of the First Respondent decides where a minister is posted. There is no specific procedure or factors but rather, the decision of where a minister is sent is one made by the Primate depending on the competence of an individual and the need of a geographical region. The Primate believes that his actions are guided by the Holy Spirit but there was no evidence for this belief.

34. On 27th February 2021, Dr. Gbogboade wrote to the Claimant instructing him that he should transfer to the Respondent's international headquarters, (in Ogere, Nigeria) no later than 15th March 2021 for his next ministerial engagement. It was also confirmed in the letter that the Claimant would receive his March 2021 salary when he reported to the international headquarters in Nigeria. The letter precluded the Claimant from carrying out any ministerial activity in the UK.

35. The Claimant was suspicious of his new assignment. He believed that the posting to Nigeria was in response to his actions in respect of the transferred funds of the North London branch and the termination of the licence with St. Jude and St. Peter's church. The Claimant had family and familial and social

roots in the UK. Therefore, he decided that he would not comply with the Primate's instruction to take up a ministry in Nigeria and also understood that he was disengaged from all ministerial activities in the UK.

36. On 8th March 2021, Bance Commercial Law sent a letter to the Respondent on behalf of the Claimant. The letter accused the Respondent of trying to humiliate the Claimant and subject him to a 'kangaroo court' and also complained about the instruction for the Claimant to transfer to the international headquarters in Nigeria. On the Claimant's behalf, the Respondent was asked to, '*withdraw the transfer letter of 27 February 2021 and confirm that our client's employment by the Church will continue as normal within the United Kingdom.*' The Claimant's employment ended when he refused to transfer to Nigeria and stated his position in this respect to the First Respondent on, 8th March 2021. The Claimant was aware he had been dismissed and this is confirmed in the Claimant's particulars of claims [29, para. 21].

37. The Claimant was last paid a wage by the First Respondent in February 2021 [42].

The Law

Unfair Dismissal

38. This important right is set out in s.94 Employment Rights Act 1996 ('ERA'), and by s.98 ERA, the employer has first to show a fair reason for the dismissal; in this case, conduct. If that is shown, then the test of fairness under s.98(4) ERA depends in part on the respondent's size and administrative resources. The Respondent is clearly a large organisation and so a very high standard of fairness is to be expected.

39. The question in unfair dismissal cases is not therefore, whether the employee was guilty of the misconduct, but - broadly speaking - whether it was reasonable of the employer to conclude that he was, and that he should be dismissed as a result.

40. As is well established from the case of British Home Stores Ltd v Burchell [1978] ICR 303 and others, that question can be broken down further as follows:

- (i) Was there a genuine belief on the part of the decision-maker that the Claimant did what was alleged?
- (ii) Was that belief reached on reasonable grounds?
- (iii) Was it formed after a reasonable investigation?
- (iv) Was the decision to dismiss within the range of reasonable responses open to an employer in the circumstances?

41. This 'range of reasonable responses' test (sometimes referred to as the 'band of reasonable responses') reflects the fact that whereas one employer might reasonably take one view, another might with equal reason take another. Tribunals are cautioned very strictly against substituting their view of the seriousness of an offence for that of the decision maker.

42. That applies not just to the reasonableness of the decision to dismiss but also to the process followed in coming to that conclusion. If a failing is identified in the disciplinary process it is necessary to ask whether the approach taken was outside that range, i.e. whether it complied with the objective standards of the reasonable employer: Sainsbury's Supermarkets Ltd v Hitt [2003] ICR 111.

43. However, it is well established that where an employee admits an act of gross misconduct and the facts are not in dispute, it may not be necessary to carry out a full-blown investigation at all: Boys and Girls Welfare Society v Macdonald. The Employment Appeal Tribunal in that case said that it was not always necessary to apply the test in Burchell where there was no real conflict on the facts.

44. Procedural fairness is nevertheless an important aspect and in considering it tribunals are required to take into account the guidance in the ACAS Code of Practice for Disciplinary and Grievance Procedures (2015).

Constructive Dismissal

45. The test for constructive dismissal derives from the wording of s.95 ERA:

- (1) *For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ... only if) – ...*
- (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."*

46. That definition does not provide any guidance as to what those circumstances might be. The leading case is Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA, where the Court of Appeal held that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

Conclusions and Analysis

Unfair/Constructive Dismissal

47. The Claimant's position in respect of the manner of his dismissal has changed over the passage of time. In his ET1, at paragraph 8.1, the Claimant had ticked the box '*I was unfairly dismissed (including constructive dismissal).*' All claimants either unfair or constructive unfair dismissal tick this box as there is no option to, at this stage indicate what type of dismissal a claimant is claiming. The specific nature of the dismissal alleged, i.e. ordinary unfair dismissal or constructive unfair dismissal is then, usually, specified in the text box at paragraph 8.1 of an ET1 or in accompanying Particulars of Claim. The Claimant

adopted the latter approach and separate Particulars of Claim were annexed to his ET1 [18-32].

48. At paragraph 6 of his Particulars of Claim⁴ the Claimant stated that he '*found the manner of my dismissal and the publicity that arose extremely humiliating and distressing.*' (My underlining). At paragraph 19.9 the Claimant wrote that he believed that the Respondent had '*no regard to the law and official guidance on the conduct of disciplinary proceedings, the ACAS Code of Practice and Guide or my rights as an employee.*' At paragraph 21 (entitled '**Unfair Dismissal**') the Claimant complained of '*the detailed evidence provided above culminating in a humiliating and damaging dismissal without notice by publicly circulated disclaimer notice....a total failure to follow any civilised disciplinary proceedings in accordance with the law and the ACAS Code of Practice & Guidance....not to mention a blatant and arguably malicious attempt to get rid of me by an impossible transfer to Nigeria in breach of contract, do show a clear case of Unfair Dismissal and I pray the honourable Employment Tribunal to award financial compensation accordingly....*' (My underlining).

49. In an email sent to the Respondent on 18th February 2021, the Claimant stated that '*As I understood your original letter of 11/2/2021 you were effectively calling a disciplinary meeting in relation to myself and matters raised in your letter. I do not dispute that the Church is entitled to do this and anticipated (as did Dr Pelling).... If you wish to convene a proper disciplinary meeting at Surrey Square with proper regard to privacy and data protection issues (see the Richard case) and will allow my Legal Advisor to attend with me as set out in my letter 15/2/2021, then we shall be happy to attend....*'

50. The Claimant first advanced a claim for constructive unfair dismissal in his second witness statement dated 23rd August 2023. In his second witness statement (prepared after receipt of the Respondent witness statements) the Claimant stated, '*In my ET1....I assumed that I had actually been dismissed by the Respondents*' (Paragraph 48) and '*Without prejudice to the power of the*

⁴ All referenced paragraph numbers in paragraph 50 of this Judgment refer to the relevant paragraphs in the Claimant's Particulars of Claim.

Tribunal to find that there had been actual dismissal by the employer I now believe my initial assumption in May 2021 was wrong and that I have not in fact been dismissed, or had my employment terminated, by the employer.' (Paragraph 49). The Claimant had not made an application to amend his claim to substitute his original claim for unfair dismissal with a claim for constructive unfair dismissal. Just as it is clear that pleadings are not witness statements, witness statements are not pleadings.

51. When the Respondent sent a letter to the Claimant on 27th February 2021, ordering him to transfer to Nigeria and report to the Respondent's international headquarters in Ogere, by 15th March 2021, this was a fundamental breach of the Claimant's contract of employment. It was unreasonable to order the Claimant to relocate from the UK to Nigeria within two weeks and the Claimant's family ties and commitments in the UK were not considered by the Respondent. However, the Claimant did not resign in response to that breach and in fact, did not resign at all.

52. The Respondent assert that the Claimant was dismissed for the fair reason of conduct. On 27th February 2021, when the Claimant was told that he was being redeployed to the Respondent's international headquarters in Ogere, the Respondent terminated the Claimant's contract for reason of conduct. The Respondent did in response to what they believed were acts of gross misconduct by the Claimant for moving monies from the North London branch account and not confirming where the monies had been moved to. The Respondent also believed that the Claimant was trying to usurp its authority and wanted to set up a separate parish in North London independent of the Respondent. These were the factors operating on the mind of the respondent as per, *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, 330 cited with approval by the Supreme Court in *Jhuti v Royal Mail Ltd* [2019] UKSC 55, [2020] ICR 731 at [44]).

53. There was no constructive unfair dismissal. The Claimant was dismissed by the Respondent on 27th February 2021 and his effective date of termination was 8th March 2021 when the Claimant refused to transfer to Nigeria. The Claimant

was given until 15th March 2021 to transfer to Nigeria (otherwise his employment would be considered terminated by the Respondent) and when he made clear on 8th March 2021 that he was refusing to transfer, his employment ended (s.971(b) ERA 1996). Ordering the Claimant to transfer to Nigeria was a sufficiently unequivocal statement of the Respondent's intention to terminate employment, Kirklees Metropolitan Council v Radecki 2009 ICR 1244, CA.

54. Whilst the Respondent had a potentially fair reason to dismiss the claimant – conduct – their actions were not reasonable in all the circumstances. In respect of the factors contained within the judgment in Burchell, it is clear that the Respondent had a genuine belief that the Claimant had committed misconduct and that that belief was reached on reasonable grounds. The Claimant had been evasive when questioned about the missing monies and had stated in no uncertain terms that he would not be transferring to Nigeria as the Respondent had instructed him to do.

55. However, there is no evidence that any meaningful investigation was carried out by the Respondent and this was not reasonable. The Respondent did not hold a disciplinary hearing with the Claimant and did not afford him a right of appeal against the termination of his employment. Whilst the decision to dismiss would have been within the range of reasonable responses it was vitiated by the Respondent not following a fair and reasonable process.

56. For these reasons the Claimant's claim of unfair dismissal is upheld.

57. The Respondent agreed that the claimant is owed the sum of £276.00p by virtue of deductions made from the Claimant's wages but which were not paid into a pension fund. This claim is also upheld and the Respondent must pay the Claimant the sum of £276.00p.

58. The Respondent failed to provide the Claimant with 30 days' notice as per his employment terms and conditions [204] and therefore, the Claimant's claim for wrongful dismissal is upheld.

Remedy

59. The parties will note that whilst the Claimant has been successful in his claims, the Tribunal has made findings in relation to Polkey and contributory conduct. The parties are strongly encouraged, in light of those findings, to agree an appropriate remedy between them. Should they not agree remedy within 28 days of promulgation of this judgment, and should at that time one or both of them consider further Tribunal time to determine remedy necessary, they should write to the Tribunal saying so, and explaining why they have been unable to agree this.

Employment Judge Sudra

Date: 13th May 2024