

The Employment Appeal Tribunal has ruled that mere delay in an employee resigning following their employer's repudiatory breach of contract does not mean the employee has affirmed the contract (and so lost the right to claim constructive dismissal). It is necessary to consider all the relevant factors when deciding whether an employee has affirmed their employment contract, not just the length of any delay.

Mr Leaney worked as an academic at Loughborough University. He raised concerns about the way the University had handled various grievance-related issues and on 7 September 2020 he resigned and claimed constructive dismissal. The employment tribunal found that the last act he could rely on as a repudiatory breach of contract by the University took place at the end of June 2020 and that he had affirmed his employment contract by waiting until 7 September 2020 before he resigned.

Mr Leaney appealed to the Employment Appeal Tribunal which ruled that the employment tribunal had been wrong to focus solely on Mr Leaney's delay in resigning. Instead, the tribunal should have considered what Mr Leaney had done, if anything, during the period between the end of June and 7 September which might signify that he had affirmed the contract. Relevant factors included the fact that:

- this period coincided with the summer holidays and so he was not doing any significant work
- for some of the period, he was off sick
- there were ongoing negotiations for much of the period in an attempt to resolve his concerns, and
- as a long-serving employee (40 years), he might reasonably need longer to make up his mind about whether to resign.

The employment tribunal had relied too heavily on the pure fact of delay in resigning and had not given sufficient consideration to other relevant factors. The case was sent back to the employment tribunal to consider the affirmation question again .

*Leaney v Loughborough University*