



EMPLOYMENT TRIBUNALS

Claimant: Miss C Taylor

Respondent: Associated Parish Centres Management Company Ltd

HELD AT: Liverpool

ON: 18 April 2017

BEFORE: Employment Judge T.V. Ryan
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr R Crabtree, Consultant

JUDGMENT having been sent to the parties on 21 April 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Issues

1.1 The issues in the case were outlined at the beginning of the hearing and agreed with the claimant. The respondent said that it dismissed the claimant for “some other substantial reason”, that is a substantial reason other than the potentially fair reasons listed in section 98(2) Employment Rights Act 1996 (“ERA”). The potentially fair reasons in section 98(2) are reasons related to the capability or qualifications of an employee, conduct, redundancy and where an employee could not continue to work in that position without breaking the law. Over and above those reasons an employer may fairly dismiss for “some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held”. In that context the issues that I had to decide upon were:

1.1.1 Whether the claimant was dismissed for a substantial reason of a kind such as to justify her dismissal from her post.

- 1.1.2 Whether the dismissing officer had a reasonable and genuine belief that the substantial reason existed, and whether at the time of that belief the dismissing officer was relying upon a reasonable investigation into the relevant circumstances.
 - 1.1.3 Whether dismissal fell within the range of reasonable responses of a reasonable employer in relation to the circumstances and the substantial reason relied upon by the dismissing officer; indeed whether all steps taken by the respondent fell within that range.
 - 1.1.4 In the light of the above, whether the respondent acted reasonably or unreasonably in treating the alleged substantial reason as sufficient reason for dismissing the claimant.
 - 1.1.5 Whether, if unfairly dismissed, the claimant's compensatory award ought to be reduced to reflect the risk facing her of being fairly dismissed. Insofar as remedy may be appropriate I might have had to consider whether the claimant's conduct and/or actions were such that it would be just and equitable to reduce any compensation payable to her.
- 1.2 Subject to a finding that the dismissal was unfair, I would have to decide upon various remedy points in a situation where the claimant sought reinstatement. It was agreed, however, that we would concentrate on deciding whether the claimant's unfair dismissal claim was successful or not first before I heard any evidence on remedy. I did not hear such evidence. In the event I was not required to resolve any remedy issues.

2. The Facts

- 2.1 The respondent manages 60 Parish Centres in the Archdiocese of Liverpool. These are licensed premises. The premises are used by members and for events, including both Parish and external social events. The respondent operates its management structure with a number of Area Managers who report to the Head of Clubs who at the material time was Mr Terence Finnegan, a witness before the Tribunal and the dismissing officer. The respondent relies on a professional internal HR support staff and external employment law support.
- 2.2 The claimant was employed by the respondent from 2003 until her dismissal with notice on 28 July 2016 (pages 129-130 of the trial bundle to which all further page references relate unless otherwise stated). She was employed as a bar person at the respondent's Parish Centre in St Ambrose Parish, Speke. The claimant lives very close to the Parish Centre which she found extremely convenient. The claimant worked part-time hours which had been agreed at Wednesday 9.00pm to 12.00am and Sunday 7.30pm to 12.30am. The claimant was on maternity leave for a period until April 2015 when she returned to work as before.

- 2.3 The respondent's St Ambrose Parish Centre has been managed by Sue Belledonne for many years, approximately 17 years at the material time. Her line manager was her Area Manager.
- 2.4 Over the course of her employment the claimant raised many and varied grievances with the respondent, and in particular regarding Sue Belledonne and Ms Belledonne's management of her, for example:
- 2.4.1 July/August 2012 – The claimant presented a grievance regarding Ms Belledonne's allocation of hours to the claimant and her attitude. The then Area Manager, Mr Connell rejected the grievance on further enquiry.
- 2.4.2 17 October 2012 – The claimant raised a similar grievance regarding Ms Belledonne and again it was rejected, as was the appeal on 7 November 2012. The Area Manager on this occasion who ultimately rejected the matter was Mr Taylor.
- 2.4.3 9 April 2013 – The claimant presented a third grievance regarding incidents about which she complained of Ms Belledonne's conduct in February, March and April 2013. She met with Mr Connell concerning this grievance and it was suggested to her that she may wish to move to a different Parish Centre pending investigation, but the claimant was not willing to do so and was happy to continue working at St Ambrose Parish centre. The outcome was that it was acknowledged that the claimant said she felt humiliated but in any event the grievance was rejected whilst recommendations were made.
- 2.4.4 23 October 2013 – The claimant presented her fourth grievance on this occasion which led to a meeting with Mr Connell on 15 November 2013, when again attempts were made to resolve matters although the grievance was not upheld.
- 2.4.5 27 January 2014 – The claimant brought forward issues from August 2013 onwards and again expressed them as a grievance, albeit she was then absent from work on maternity leave to April 2015.
- 2.5 In the period from April 2015 (the claimant's return to work) and August 2015 relationships between the claimant and Ms Belledonne appeared to be suitable such that amicable and efficient working could continue. She then had an issue with Ms Belledonne over invitations to a 60th birthday party and this was a personal matter, or at least a matter that the claimant took personally; she then felt as a consequence that Ms Belledonne was not talking to her. This was not specifically work related, albeit the party was to be held at the St Ambrose Parish Centre.
- 2.6 During the period March 2016 to May 2016 the claimant had a number of fallings out with a colleague named Kelly. There were arguments and disagreements between Ms Belledonne and her colleague, Kelly, and the

claimant over their working hours, perceptions of respective effort in fulfilment of duties, money, conversations with customers and their availability for or refusal to accept adjusted working hours. Ms Belledonne appeared to become increasingly frustrated with the claimant and during an altercation, or immediately following an altercation, with the claimant, referred to her as a “bitch”.

- 2.7 On 5 May 2016 Ms Belledonne presented a grievance to the respondent which appears at pages 151-152. She admitted that she called the claimant a “bitch” and ought not to have done so, saying that she was angry and upset, feeling very stressed and that she had been goaded. That said, she wished to make her views known of the claimant and wished to pursue a grievance. In the event Ms Belledonne agreed that the respondent could defer action in respect of her grievance whilst it dealt with the claimant's slightly later grievance of 12 May 2016. Ultimately on 12 August 2016 the respondent dealt with Ms Belledonne's grievance and it put a letter of concern on her file regarding her use of abusive language towards the claimant. The letter of concern was considered to be a managerial action short of a formal disciplinary sanction.
- 2.8 On 12 May 2016 the claimant submitted her sixth grievance to the respondent regarding Ms Belledonne and this appears at page 87. She followed this with a number of complaints. On 13 June 2016 she complained about matters in documents at pages 103-107. In a complaint at page 116 dated 11 July 2016 she made complaints regarding incidents on 19 June and 10 July 2016.
- 2.9 The respondent investigated the claimant's complaints. Mr Finnegan, however, had serious concerns about the time and resources being invested in attempting to deal with the claimant's grievances in a situation where they had not been upheld and it appeared that her problems with Ms Belledonne were intractable but her complaints not sustainable.
- 2.10 Mr Finnegan embarked on a series of meetings with the claimant and her trade union representative, meeting them jointly on 26 May, 14 June and 27 July 2016. On each such occasion he discussed in detail with the claimant and her trade union representative her various complaints and how best the respondent could resolve them if possible. A number of options were canvassed by all three participants in the discussions, including the claimant, and the options included the possibility of mediation, moving Ms Belledonne to a different Parish centre, moving the claimant to a different Parish Centre, a financial settlement with termination of employment, or indeed just termination of employment. The latter was something raised in the respondent's invitation letter of 20 July that appears at page 120.
- 2.11 During and in the light of those discussions, and following them, Mr Finnegan gave all of the matters very serious consideration and he approached the matter conscientiously and diligently with a view to resolution in the best interests of the claimant, Ms Belledonne, St Ambrose

Parish Centre and the respondent. He concluded, however, that it would not be a good option to move Ms Belledonne because of her seniority, the duration of her employment, the high standard of her service, and for both reasons that were personal to Ms Belledonne and the commercial advantages to the respondent and St Ambrose Parish Centre of her remaining in post. The claimant was not prepared to move to a different Parish Centre, albeit there was one within in 10-15 minute drive from St Ambrose Parish Centre, Speke. The claimant wanted the convenience of working so near to home.

- 2.12 The claimant would not accept the proposed financial settlement, and neither would she accept the offer of mediation. The only solution suitable to the claimant was that she would retain her employment at St Ambrose Parish Centre and that Ms Belledonne, her line manager and the manager of the Centre, would be moved.
- 2.13 Mr Finnegan was led to believe, and did believe, from his discussions with the claimant and a trade union official, that the claimant could not and would not continue working under the line management of Ms Belledonne, and would not embark on mediation. Neither the claimant nor her trade union representative believed that mediation would succeed. The claimant alleged that Ms Belledonne would say one thing in mediation but do the contrary in practice. The claimant did not trust her line manager.
- 2.14 In fact, and as admitted by the claimant, she gave little thought to the possibility of mediation and it was not her focus in meetings (or subsequently in appealing against dismissal or in preparing her witness statement for the Tribunal). She did not engage with the offer made by the respondent of meaningful negotiation with Ms Belledonne. In the circumstances I accept that Mr Finnegan had every reason to believe that the claimant was rejecting the option of mediation, although in fact the claimant did not explicitly state that.
- 2.15 In conclusion Mr Finnegan decided that the employment relationship could not continue any further and that it had been seriously damaged to the point of being destroyed. He dismissed the claimant by a letter dated 27 July 2016 (pages 129-130). The dismissal was with immediate effect upon payment in lieu of notice and the payment of accrued holiday pay. The claimant was given the right to appeal.
- 2.16 The claimant appealed against Mr Finnegan's decision to dismiss her. That appeal was heard by Father Kirwan, a priest in the Archdiocese. He heard from the claimant. Father Kirwan rejected the claimant's appeal and upheld Mr Finnegan's decision for the reasons he stated in his letter at pages 134-135. Whilst with hindsight the claimant was now prepared to consider mediation, Father Kirwan concluded that the relationship had irretrievably broken down and gone beyond that stage as the claimant had earlier acknowledged.

3. The Law

- 3.1 Section 94 ERA states the right that an employee has not to be unfairly dismissed by an employer. Section 95 ERA defines the circumstances in which an employee is dismissed, including where the contract of employment is terminated by the employer whether with or without notice.
- 3.2 Section 98 ERA provides that in determining whether or not a dismissal is fair or unfair, it is for the employer to show that the reason, or if more than one the principal reason, for the dismissal either falls within section 98(2) ERA or was for “some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held”. This is known as an “SOSR” reason.
- 3.3 If a dismissal is for an SOSR reason or any of the other reasons listed at section 98(2)(a)-(d) ERA, a Tribunal must adjudge whether the dismissal was fair or unfair having regard to the reason for it dependent upon the circumstances (including the size and administrative resources of the employer’s undertaking) and deciding whether the employer acted reasonably or unreasonably in treating as a sufficient reason for dismissing the employee; or such matters being determined in accordance with equity and the substantial merits of the case (section 98(4) ERA).
- 3.4 One would therefore expect where SOSR is put forward that a respondent employer has a reasonable and genuine belief in the reason relied upon, upon suitable enquiry and investigation, and furthermore that dismissal falls within the range of a reasonable responses of a reasonable employer to the SOSR. Those principles are derived in general terms from cases concerning dismissals related to conduct, but as they concern the interests of justice and the principles of equity applied to the substantial merits of the case, they are applicable to SOSR dismissals.
- 3.5 It is established law that in contract where there is a fundamental breach of a contract of employment such as a breach of the implied term of trust and confidence then the contract cannot subsist. Trust and confidence underlies and is the foundation of the employment relationship. A breakdown in the relationship can amount also to a substantial reason for terminating employment, particularly where it is considered that the interpersonal relationships between colleagues is such that the respondent’s business is disrupted, where the problem is reasonably adjudged to be an intractable one. In such circumstances it would be just and equitable to expect an employer to make every genuine and reasonable effort to resolve personal animosity and difficulties before concluding that the problem is so deep-rooted that it is intractable.

4. Application of Law to Facts

- 4.1 On the basis of the facts found I conclude that the relationship between the claimant and the respondent by virtue of the dire relationship between the claimant and her line manager, Sue Belledonne, had broken down by 27 July 2016. The damage was beyond serious. There were opportunities for the parties to maintain the relationship at various times and to resolve interpersonal difficulties, even when the relationship was clearly in severe

difficulties. I considered that it would have been reasonable for the respondent to do a number of things in relation to the claimant, and only in the light of her reaction could it be said that it had done all it ought to do to avoid consideration of dismissal, and they include:

- 4.1.1 An acknowledgement of the claimant's complaints. The respondent did that.
 - 4.1.2 To investigate the claimant's complaints in good faith, conscientiously and thoroughly. It did that.
 - 4.1.3 It ought to have met with the claimant to discuss her grievances and problems at work generally. It did that.
 - 4.1.4 It ought to have allowed the claimant to be represented in putting forward her complaints and grievances and in attempting to resolve them. It did that.
 - 4.1.5 It ought to have allowed time for careful consideration of all relevant factors and to have allowed some time for the claimant to consider her position. It did that. There were three substantive meetings a month apart prior to dismissal in an attempt to resolve issues, and they were in May, June and July 2016.
 - 4.1.6 It ought to have attempted to resolve issues fairly and conscientiously and to present options to the claimant that were reasonable and sustainable. It did that.
 - 4.1.7 It ought to have considered the claimant's responses to the options before it concluded on its preferred way to progress matters. It did that
- 4.2 The respondent had reasonable grounds to conclude that the claimant would not accept any resolution short of Ms Belledonne being moved out of St Ambrose Parish Centre. This was against the background of the respondent having rejected each and every one of the claimant's substantive grievances such that there was no good reason to move Ms Belledonne save for her one instance of falling below professionally acceptable standards by using the term "bitch" in respect of the claimant. Notwithstanding all of that, the respondent did consider the option of moving Ms Belledonne, investigated and rejected that reason for personal factors related to Ms Belledonne and for commercial reasons in the best interests of the respondent's business.
- 4.3 Faced with an intractable interpersonal relationship problem and having no good reason to dismiss or transfer Ms Belledonne, the only option left for the respondent was to terminate the claimant's employment; I say the only option left because the claimant closed down all other options. She would not stay and mediate, she would not transfer. The respondent could have dismissed Ms Belledonne or it could allow a dire situation to fester even further. In all the circumstances the range of options was from the

dismissal of Ms Belledonne to the dismissal of the claimant. Dismissal of the claimant fell within the range of reasonable responses of a reasonable employer, where she was the one who was dissatisfied but without being able to substantiate justification for it, other than the fact that she did not like and could not get on or would not get on with Ms Belledonne.

- 4.4 In conclusion I consider that Mr Finnegan had a reasonable and genuine belief based on investigation and following detailed consideration that the relationship between the claimant and Ms Belledonne had broken down and that the claimant could not and would not work on under her line manager to the satisfaction of the respondent. Mr Finnegan considered suitable alternatives. Following his diligent consideration he made a conscientious decision, in good faith, in the best interests of the respondent, in justice and in equity.
- 4.5 The complete breakdown of the relationship of trust and confidence between the claimant and her line manager leading to the disruption of the respondent's management generally by its having to deal with the claimant's frequent, multiple, repeated and unsubstantiated allegations, complaints and grievances, was a substantial reason for dismissal. The dismissal as therefore for a fair reason.
- 4.6 Mr Finnegan for the respondent acted fairly and reasonably in all the circumstances in treating that substantial reason as sufficient reason to dismiss the claimant in line with the principles enumerated in section 98(4) ERA.

Employment Judge T V Ryan

Date: 02.06.17

REASONS SENT TO THE PARTIES ON

7 June 2017

FOR THE TRIBUNAL OFFICE