



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Ms L Crawford

AND

Respondent

Boughey Distribution Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham

ON 31 July & 1 August 2017

EMPLOYMENT JUDGE Lloyd

Representation

For the Claimant: Mr J Searle, Counsel

For the Respondent: Ms H Watson, Solicitor

JUDGMENT

The judgment of the tribunal is that:

- 1) The claimant has proven her claim of constructive unfair dismissal.
- 2) I make no finding of contribution or other discount. The claimant shall be entitled to recover compensation in full.
- 3) I adjourn the remedy hearing to **Monday 27 November 2017** at Birmingham Employment Tribunal commencing at 09:45am and listed for 1 day.
- 4) A case management order giving directions for the remedy hearing accompanies this judgment¹.

REASONS

Background and issues

- 1.1 This claimant's claim was presented on 21 January 2017. Her ET1 advanced claims of sex discrimination and public interest disclosure; as well as a claim of constructive dismissal. Subsequently, on 7 April the claimant's solicitors informed the tribunal that the claimant was withdrawing her claims of discrimination and whistleblowing; thus leaving only the dismissal claim. A judgment dismissing the two former claims was promulgated by the tribunal on 25 April.
- 1.2 There was no dispute that the claimant was anything other than an employee, and had qualifying service to bring a complaint of ordinary constructive unfair

¹ A case management order was sent to the parties with the short judgment.

dismissal under s.98 Employment Rights Act 1996 (“ERA”). The essential issues for the tribunal are relatively narrow and well defined in this case.

- a) Was the claimant treated in such a way that she was entitled to treat herself as constructively dismissed? Namely;
- b) Did the respondent without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship trust and confidence between the parties?
- c) Was the respondent otherwise guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the respondent no longer intended to be bound by one or more of the essential terms of the contract, such that the claimant was entitled to treat herself as discharged from any further performance. Was the conduct sufficiently serious to entitle her to leave at once?
- d) Did she lose her right to do so by delay or otherwise electing to have affirmed the contract?
- e) Does the respondent prove that if it had adopted a fair procedure the claimant would have been fairly dismissed in any event? And/or to what extent and when?

The factual matrix

- 2.1 The claimant began her employment with the respondent on 2 January 2002, with the title of Workshop Administrator. On 21 July 2003, she was promoted to Transport Administrator. Having completed specialist training sponsored by the respondent, the claimant applied for the role of Compliance Manager with the respondent. She was successful and began the new role on 1 June 2014.
- 2.2 In about June 2014, Steve Newton (“SN”) joined the business as the Transport Operations Manager. The claimant contends that he started to interfere with almost every aspect of her job. The claimant perceived that SN was being lined up for promotion; to succeed Joe Foster (“JF”), the Transport Manager. In October 2014 JF went on “garden leave” and never returned. SN succeeded to the position of Transport Manager.
- 2.3 In her statement and her verbal evidence to this tribunal the claimant has described a catalogue of events allegedly instigated by SN impinging upon the execution of her role as Compliance Manager which individually or cumulatively amounted to a breach by the respondent of the implied term of mutual trust and confidence. In consequence of work related stress brought on by these events the claimant was signed off sick, initially on 27 April 2016 and prescribed medication for stress and depression.
- 2.4 The claimant engaged in meetings with the respondent and their legal adviser during June and July 2016; and she sought advice from her own solicitor. The claimant’s case is that by late August 2016, her health having deteriorated further, with panic attacks, she realised, she says, that she was not going to receive any support from the respondent. She tendered her resignation, by

letter, on 22 August 2016 (p.131). Her notice period of 12 weeks ended her employment on 13 November 2016.

- 2.5 I heard evidence from the claimant; and from Mr Newton, Mr Fossett and Mrs Russett, for the respondent. All had presented written witness statements.
- 2.6 There was a common, single bundle of documents prepared for the hearing.
- 2.7 The claimant cites “a last straw” of 19 July 2016; a meeting with the respondent and its solicitor, Mrs Watson; at which a prepared settlement agreement was put before the claimant with a view to terminating her employment on terms. She maintains she desperately wished to return to her job; with the support of the respondent. Such support she asserts was not forthcoming; leading her to conclude that there had been a complete failure of trust and confidence between them; justifying her decision to resign. The events of 19 July 2016 were the cumulation of a fundamental breach of contract tainted with discrimination and harassment as a woman in a male dominated working culture; though such claims in terms are no longer pursued by the claimant.

Law, analysis and conclusions

- 3.1 The claimant has contended unfair constructive dismissal. The extent of what this tribunal is required to do is to consider whether the claimant terminated her contract of employment in circumstances where she was entitled to terminate it (with or without notice) by reason of the respondent’s conduct. In statutory terms the claim rests on section 95 (1)(c) of the Employment Rights Act 1996 (“ERA”). Classically, Western Excavating v Sharp [1978] ICR 221 is at the cornerstone of the authorities.
- 3.2 The chronology and essential factual matrix is not really in dispute. I have a very well drafted chronology before me. In terms of the catalogue of events, as such which led to the claimant’s decision to resign, on whatever basis, that is not really in dispute. The key issue for this tribunal is to address, on the evidence, whether, by her letter of resignation of 22nd August 2016, the Claimant was responding to the Respondent’s fundamental breach of the implied term of trust and confidence.
- 3.3 I conclude, on the evidence that she was responding to a fundamental breach on the Respondent’s part. It had committed a serious breach of the contract; in a manner so as to shatter the claimant’s confidence that the Respondent would support her in a return to work, free from apprehension of poor treatment. She fairly perceived by 22nd August that she had no alternative but to leave the job she had valued for some 15 years or so. In short, I accept her evidence that she could not countenance a return after 4 months’ absence because of work related stress, clearly documented on the Med 3 certificates. Moreover, the onset of panic attacks, she found naturally very disturbing.
- 3.4 The claimant had fairly concluded, I find, by the time of her meeting on 19 July 2016, with Mrs Russett and also the company solicitor, Mrs Watson, (who appears before this tribunal now as the respondent’s advocate), that the Respondent company would not or was unable to address her fears. They

were legitimate fears, I find, of unfair treatment by SN and other colleagues; in circumstances where the respondent, on the face of it, reacted with no more than a cosmetic damage limitation. That was, by seeking to exit her from the business on an agreed severance as quickly as possible. It was not a redundancy in legal terms. I believe that the claimant was, rightly, clear throughout; that her job was not redundant. She did not want to exit the business. But, she had been brought to the brink in concluding that she had no alternative but to leave because, quite simply, she couldn't face coming back because of bad treatment which the respondent would not stamp out.

- 3.5 I must be fair to both SN and Mrs Russet in saying this; whether SN can be called a 'bully' in the traditional sense of the term is not really the crux of the issue here. I do not purport to make any finding here that SN is a bully. What I do find however is that SN was dangerously less than circumspect and professional in the way he engaged with a long-serving female manager, recently placed under his line management. He should have behaved in a much different manner as a responsible manager. I suspect that in retrospect he does realise that now. This is not now a sex discrimination claim. It began life as a such a claim. That part of the claim was withdrawn and this is not in any way an attempt to judge this case under the Equality Act 2010. But I conclude that in the context of the constructive dismissal issue here, the same general principles would apply; and would equally apply if the claimant were a male employee.
- 3.6 But, the evidence before me does give rise to my inference that SN did not, exhibit the same level of appreciation or workplace respect for the claimant, as a quite senior female colleague; as he - and members of his team - would have accorded to an equivalent male manager. It may have been subconsciously on his part. However, that is of no matter. He did take unfair advantage of the claimant's vulnerability and also her relative lack of managerial experience; which she acknowledged. He fell into a trap of treating her in a much more blunt and harsh manner; and in a manner, purposeful or otherwise, which was offensive and humiliating for the claimant.
- 3.7 An even more disturbing aspect of the evidence, and part of my finding, is that SN's culture had regrettably begun to "infect" other male colleagues; who were less senior and less experienced and long-serving, than the claimant.
- 3.8 The evidence is of the classic ingredients of breach of trust and confidence; a marginalisation and freezing out. There were changes in reporting, there were criticisms of the Claimant but without the feedback, assurance and support there should have been in circumstances where she was ready to confess that she did not have an expert level of managerial confidence.
- 3.9 There were implied and sometimes express snide threats to her in terms of her job security and the worth of her role to the employer. I recognise on the evidence that this was a highly competitive environment for the Respondent; where every step must be taken to make the business as competitive and efficient as possible. Moreover, where the workforce must be as practiced, experienced and disciplined as possible.

- 3.10 There had been I find, a change to the dynamic of the transport operation's structure since the promotion of SN. However, SN should not be gratuitously criticised for trying to carry out what was his brief; and it was quite a tough brief, as an improver and a moderniser. That was his duty and his job description. He had to complete that or else he would fall into disfavour with his employers. However, that brief and the need to change the dynamic should have made SN the more alert to his duty, to avoid the perception and reality of marginalising a long-serving female manager. More especially, he failed to avoid - as he scrupulously should have - gender specific indicators in the new dynamic; even subconsciously. SN, perhaps in his enthusiasm as the new Transport Manager didn't take that care. The consequence and impact on the claimant was, that it reduced her to the ill-health that has been described and documented before this tribunal. Moreover, SN should have been acutely conscious of what was happening to her.
- 3.11 Had the respondent reacted properly and fairly to her complaints she could and should have remained in her much valued job. Getting back into the workplace was what she wanted. The respondent failed, as it should have, to facilitate that. The conduct of which the claimant rightly complained should have been eradicated; and the trust and confidence between the parties restored and preserved.
- 3.12 SN should not be required to bear all the blame for what happened. There is a wider blame for the breach of trust and confidence; and it was an organisational one. It was one that went to broader employee relations and directorial responsibility at a more senior level. Quite simply, the Claimant's ongoing distress was highly visible over a period of some 4 months of Med 3 certificates being submitted. It was visible specifically to the HR function as were the claimant's protestations as to the causes of her distress. That was not solely Miss Russett's fault; but this was a function under her stewardship and as she had taken charge of the matter. On behalf of the HR function she should have acted more incisively and supportively to address the Claimant's visible and worsening distress. Mrs Russett's account for not taking action needed to be far more focussed and rationalised than it was. Mrs Russet is the most senior HR professional for the group of companies. She should and could have acted in a more proactive and focused manner. Rather, the approach that the Respondent took was one of, "a quick fix" (*my phrase*). It was an approach of simply getting the allegations and the problem out of the way. The respondent did not accept the allegations of bullying and marginalisation. However, at the same time it was looking to solve the problem of a long-term sick employee who was going through the various stages of the long-term absence procedure.
- 3.13 In short, I find the approach of the Respondent was all too visibly, based on damage limitation by the exit of the Claimant in as quiet and as uncontroversial manner as could be achieved. The respondent had at the very least constructive knowledge of the claimant's loss of trust. Equally, SN was a highly regarded and valued senior manager of the respondent. By 19 July 2016, the claimant was well aware that her exit was the respondent's preferred strategy. The claimant's day to day working environment was culturally male dominated. That was a fact that was not and could not be disguised. There were female managers and operatives; and the claimant

was one of the most senior. However, this was overall a very male orientated workplace in a historically male dominated industry. In the modern age, however, overt gender specifics need to be scrupulously avoided regardless of the gender heritage. That is consistent with the basic principles of the EqA and the Codes of Practice allied with those statutory provisions.

- 3.14 Not nearly enough was done by the respondent to ensure that those overt indicators were avoided in the circumstances described in the evidence.
- 3.15 The Claimant's response to those significant and unaddressed shortcomings in the Respondent's conduct, both at the shop floor and executive office levels, provided supportable grounds for the claimant to tender her resignation and for it to fall within section 95 (1)(c) ERA.
- 3.16 She has discharged her burden in establishing that she was constructively dismissed and indeed from all perspectives that dismissal was unfair in all the circumstances.
- 3.17 The claimant succeeds in her claim and is entitled to remedy by way of compensation for unfair dismissal. A directions order for remedy shall accompany this judgment.

Signed:

Date: 4th September 2017

Employment Judge Lloyd

Sent to the parties on

7 September 2017.....

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FOR TRIBUNAL OFFICE