



EMPLOYMENT TRIBUNALS

Claimant: Mrs Julie Reddican
Respondent: Miss Denise Cambray
Heard at: Mold **On:** 14 – 16th June 2017
Before: Employment Judge T Vincent Ryan

Representation:
Claimant: Litigant in person
Respondent: Mr. M. Howson, Consultant

JUDGMENT having been sent to the parties on 21st June 2017 and reasons having been requested by the [respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. The Issues

1.1 The issues that I had to decide upon were identified by me and agreed with the parties at the outset as:

- (1) What was the reason for the claimant's dismissal? Was it for whistle-blowing and/or raising issues of health and safety in a grievance to the respondent dated 30 March 2016 (pages 45 to 47) or was it for some other substantial reason namely a breach of trust and confidence?
- (2) Did the Respondent fail to pay the claimant wages that were properly due to her from 25 April 2016 to the effective date of termination of employment on 7 July 2016. The issue there is whether the claimant was ready and able to work but refused to

work, that is was she not willing to work, or whether the respondent did not allow the claimant to work which would effectively amount to her suspension.

- (3) Whether the respondent failed to pay to the claimant two weeks' holiday pay properly due to her. The respondent conceded this at the outset such that it was not an issue to be resolved during the hearing.
- (4) Whether the respondent failed to provide the claimant with notice of termination of employment; one week's notice of termination was due from the respondent to the claimant. This too was conceded by the respondent.
- (5) Whether the respondent gave the claimant a written statement of employment particulars at the commencement or within 8 weeks of the commencement, of employment and if not whether the respondent ought to pay to the claimant either 2 or 4 weeks wages in that regard.

2. The Facts

2.1 The respondent describes herself as being a severely disabled person. She is living with spinal muscular dystrophy, a degenerative muscular condition. She is a wheelchair user. The claimant requires 24 hour, seven days per week domiciliary care. Her disability is physical; she has full mental capacity. The respondent does not consider herself to be a vulnerable adult which description she finds belittling. Whilst she cannot care for herself physically that is, to her mind, the extent of her vulnerability; she says that she is only vulnerable in the context of her requiring personal care. The claimant does not consider herself mentally, psychologically or emotionally vulnerable. She is an adult and she employs 4 carers at any one time, self-managing their employment that is funded by the Local Authority via the direct payment scheme. The respondent chooses not to adopt formal policies and procedures specifically those regarding issues such as risk assessment and formal record keeping that are usual in a care or health care situation; she is critical of such an approach, which is to her mind an institutional approach. That is not the word the respondent's used but that is the implication, but it is the approach of what she calls "the care community". The claimant values highly her individuality, her independence and privacy.

2.2 The claimant knew all of the above throughout the material time even though it challenged her usual professional practices and the

claimant's approach was contrary to what she as a professional, conscientious, carer would have considered "best practice".

- 2.3 The respondent's principal carer and named responsible person is CA. The Respondent and CA enjoy a personal relationship as partners. CA is a frequent and regular visitor to the respondent's home when not working and effectively lives with the respondent for substantial periods of time each week; that is the arrangement that the respondent has chosen and appreciates.
- 2.4 Some at least of the respondent's siblings, if not all, are estranged from her. Her sister VP lives across the road from the respondent; they have had a falling out. This was known to the claimant and her colleagues at the material time. CA has been convicted of an offence in relation to possessing and viewing images of child sex abuse. The claimant suspects on the basis of her observations, that CA is a heavy drinker whose drinking habits have become worse to a worrying degree to her since approximately Christmas 2016. She is also critical of his personal hygiene. The claimant considers that CA's standards of care for the respondent insofar as his attending to caring duties falls below an acceptable standard. The claimant felt that CA's presence and behaviour could have a bad effect on the respondent and that it did adversely affect her, the claimant, in the performance of the claimant's own professional duties.
- 2.5 The claimant is registered with CSSIW and worked for the respondent initially in 2013. She left her employment but then returned to work anew on 22 July 2015 working 12 hour shifts on a rota with the other carers. In 2013 the respondent gave the claimant a written statement of employment particulars. They were not reissued in 2015, but both parties understood that the same terms and conditions would apply to the second period of employment that ended on 7 July 2016.
- 2.6 The respondent and the claimant had a good relationship. They trusted each other as is required in such circumstances where compassionate professionalism is required and I am satisfied that it was well provided by the claimant. I am satisfied that in the provision of personal care to the respondent the claimant worked to high professional standards and in the respondent's best interests at all times.
- 2.7 On 29 March 2016 the claimant happened upon an article in the local paper, a court report, concerning CA's conviction for the offences I have referred to above. She was shocked, upset and appalled. She rang the respondent to discuss the situation, but was unable to speak to her so she contacted Social Services to notify them of CA's conviction.

- 2.8 The claimant drafted a grievance letter on 30 March 2016 (pages 45 to 47) listing ten concerns of perceived risks to the respondent from CA and one regarding concern over possible public reaction to CA's conviction which could affect not only the respondent but also the claimant and her colleagues. She sent it to the respondent by recorded mail on 5 April 2016. The claimant had been on annual leave and was to return to work, and did return to work, on 6 April 2016 by which date she had hoped the respondent would have seen and read the letter. The respondent did not receive it; she was not able to receive it when it was delivered initially and then it was taken back to the Post Office or somewhere to be collected. The claimant was motivated at this stage by her genuine concern for the respondent generally, but was also personally outraged and affronted at the fact of CA's conviction.
- 2.9 The claimant attended work on 6 April and that was, as it turned out, her last shift worked in the respondent's employment. She discussed the situation of the conviction with the respondent and also some of her other reservations about CA. She made it clear that in the light of his conviction she could not work with or share time and space with CA for the present time, that is for an unspecified period of time. This stance was primarily because of CA's criminal conviction and not the other issues that she had put up with to an extent since December 2016.
- 2.10 CA's criminal conviction so angered the claimant that she was not prepared to work with him or near him or to have contact with him at that time; it was this indignation that brought out the other concerns that she had had since December; CA's criminal conviction was effectively the last straw.
- 2.11 The claimant said she did not want to finish the shift on 6 April and the respondent agreed, reluctantly, that she could finish early. The claimant's early departure on that day was by mutual agreement. The claimant was prepared to work for the respondent, but not to come into contact with CA, such that she would only work on condition that there would be no handovers on changing shifts, CA was not to be in residence when the Claimant was working, nor was he to visit the respondent whilst the claimant was on site.
- 2.12 As CA was the respondent's partner the claimant's conditions were not acceptable to the respondent. The respondent also did not want to put the claimant in a difficult position or for her to be unhappy at the risk of meeting CA. The respondent proposed that the three of them discuss matters. They worked, and to an extent lived, together in close proximity and had a relationship that included going out to places

together socially so it was conceivable that they could discuss issues between themselves but for the claimant's indignation about CA's criminal conviction. The respondent proposed a discussion in those circumstances or that the claimant work reduced shifts so that she would not come into contact with CA. I am satisfied that the respondent offered two alternatives to the claimant. Whether the offer was as explicit as saying that she could work 10am to 10pm I cannot be certain because there is a complete difference of evidence between the parties and both were credible and plausible but I find that the respondent offered the claimant to hold tri-partite discussions and reduced shifts to minimise the risk of the claimant meeting CA at work pending resolution of the issue. The Claimant was not ready for either proposal at this stage so the Respondent arranged alternative care cover. The Respondent had no option other than to arrange cover in the absence of any carer because she needed 24 hour domiciliary care.

- 2.13 In the following days there was an exchange of text messages. On 11 April 2016 the claimant confirmed that she would work the following day that is 12 April, taking the respondent to a physiotherapy appointment, but she did not want CA to accompany them. This reads as being, and was understood by the respondent to be short of a full commitment to return to work for a 24 hour shift as before and seems to be limited to the physiotherapy appointment. Whether or not that was what the claimant meant, that is a reasonable interpretation of the text. The claimant said there must be limited contact with CA which could be mutually agreed until her grievance had been dealt with by the respondent. By this point the respondent had not even collected the grievance letter from the post office; she did not collect it until 14 April 2016. The respondent's understanding from the text dialogue was that the claimant was not committed to working 24 hour shifts.
- 2.14 Also on 11 April 2016, as the respondent had not formally acknowledged the grievance letter, the claimant sent a copy of the grievance to the Social Services Department that funded the direct payment scheme and the care package. (Page 176).
- 2.15 The respondent's sister BP telephoned Social Services on 11 April raising an issue of alleged emotional and physical abuse saying that she was aware of this issue from a carer.
- 2.16 On 14 April 2016 the claimant asked the respondent whether she was expected to work the next day, 15 April, and the respondent said that the claimant was not expected to work and she was taking legal advice (page 178). On 15 April, which would have been the claimant's next shift (page 179) the respondent told the claimant not to attend

work until the grievance meeting; that was an instruction to the claimant.

- 2.17 On 18 April the Claimant confirmed that she would honour her shifts and she did not specify any conditions (page 183); at this stage she indicated clearly to the respondent that she was ready, able and willing to work normally. It was known that she had a preference that she would have limited contact with CA pending the grievance, but she was committed herself to fulfilling her contract of employment with the respondent. I find therefore that from 15 April 2016 until the grievance hearing on 18 May 2016 the reason for the claimant's absence from work was the respondent's instruction not to attend work; acting on legal advice the respondent suspended the claimant from work pending the grievance hearing.
- 2.18 The claimant wanted support over this whole matter and to consult with a colleague. The respondent consented to the claimant having contact, one meeting, to discuss her personal affairs with Anita Coley, a colleague carer.
- 2.19 On 18 May 2016 Jan Dodd of Rowan, a supporting charitable organisation chaired the grievance hearing at the respondent's invitation. Present also was a representative from Social Services, the respondent, the respondent's Independent Advocate, the claimant, the claimant's Trade Union Representative and a note taker. Notes of the grievance hearing are at pages 89 to 102.
- 2.20 At the grievance hearing the claimant confirmed her grounds of grievance and that she was angry about CA and his conduct that led to his conviction, but she did not feel that she was at any personal risk from him. She was concerned that as the criminal conviction was in the public domain neighbours might react adversely to her, to the respondent and to other of the claimant's colleagues. She emphasised that she did not want to fall out with the respondent and that she was concerned for the respondent's welfare. The claimant felt that even with full mental capacity the respondent could be abused by CA and she felt it was her duty to raise concerns (page 95). She did not allege that CA had actually abused the respondent, but she had a genuine and conscientious concern as she felt that the respondent was a vulnerable adult. She explained her willingness to work, but that the respondent had instructed her not to do so pending the grievance hearing, and that the claimant was prepared to work provided there was limited contact with CA. At the grievance hearing there was a discussion of the extent of that contact.

- 2.21 The claimant confirmed that she and Anita Coley had called to see BP about these issues, but that BP was not at home at the time. She said the purpose of that visit was to explain to BP that they had not known of CA's conviction until seeing it in the newspaper. The respondent suspected that the claimant had spoken to BP about matters that were personal to her.
- 2.22 At the end of that hearing the claimant again queried when she could return to work and this time was told by Paula Davies on advice and on behalf of the respondent (and she was also told by the Respondent) not to return to work for the time being. This continued absence was pending a resolution of issues and therefore it was an extension of the suspension from work that started on 15 April. The suspension continued up to and including 7 July 2016, the effective date of termination of the claimant's employment. The claimant was paid her wages up to 24 April 2016 but was not paid for the period from 25 April to 7 July 2016.
- 2.23 On 3 June 2016, at pages 116 to 120, Paula Davies on behalf of Jan Dodd of Rowan confirmed that the grievances had not been upheld for lack of evidence. The claimant was told she could appeal against that outcome. Social Services suggested that parties enter into mediation. The Claimant did not appeal the outcome; she opted for mediation and the Respondent was amenable to mediation. (Reference 13 June 2016 pages 128 to 129). However the claimant raised the prospect in that letter of raising these grievance issues again at a later date.
- 2.24 On 15 June and 16 June 2016 the respondent put her thoughts on the situation down in emails to Paula Davies and Social Services at page 131 and 132. These emails said a lot about the respondent's state of mind as at 15 and 16 June 2016. She was upset that whilst the claimant said that she was not appealing against the rejection of the grievance and opting for mediation the claimant was "still going over old ground". The respondent believed that the claimant was doing this by unfairly criticising the grievance procedure and creating an unnecessary problem between the respondent and the claimant (because in fact the claimant's complaints were about CA who is the Respondent's boyfriend). Some of the other carers were saying that the claimant had been telling them about the situation and she was encouraging them not to work for the respondent. Whether or not the claimant ever did that I do not know and I cannot make any findings of fact about that in the absence of corroborative evidence, but I do believe the respondent when she says that this was her understanding and it was what she had been told by the other carers.

2.25 The respondent felt bypassed by the claimant and that she was not being taken seriously as the claimant's employer. The respondent complained that the claimant should have dealt directly with her over her concerns. Significantly the respondent wrote that the claimant was "trying to put resistance on my life that I have to see CA, my boyfriend, at a minimum that is totally unacceptable", that the Claimant "was dictating who I can see and talk to in my everyday life and including others in the grievance when others had no problem with me". This latter comment was a reference to the respondent's other carers. Significantly in her oral evidence at the Tribunal the respondent said, and I believe and find this to have been her view at the time:

"Normally I would resolve issues with carers but I cannot have it that what I say goes to my sister and brother. I am not having that in my life. I want to have trust. Going to Social Services I am disappointed with, but I would have carried on as the boss, but the trust issues, going to the other carers Kelly Bennett and Anita Coley and to my sister, that was the biggest trust issue. I could not deal with it."

2.26 The respondent had not consented to the claimant contacting Anita Coley to discuss her (the respondent's) personal situation outside work more than the once she knew about; she did not consent to the claimant discussing her personal affairs outside work with Kelly at all. She had not consented or known about the claimant and Anita Coley going to visit BP, whether or not that visit was effective. These contacts and conversations about the respondent's personal affairs outside work fueled the respondent's suspicions that that was why BP telephoned Social Services to report allegations of abuse.

2.27 It follows from the above that I find that the respondent did not dismiss the claimant for the fact of her disclosures to the respondent or Social Services of her concerns. The claimant's complaints about CA were personally difficult for the respondent but it was the breach of trust in how the claimant then pursued the matter, that is by discussing it with other carers and BP, that the respondent saw as a breach of trust and an attempt to put limitations on how she lived her life, her choice of boyfriend and her contact with him.

2.28 A mediation meeting was held on 4 June 2016 chaired independently by Paul Davies (page 150 to 152). The claimant reiterated all of her concerns, her sense of duty, and pride in her professionalism which was well placed. The parties had reached an impasse; this was now an intractable issue with on the one side the claimant's genuine concern for the respondent regarding CA and the involvement of CA in the respondent's life and on the other hand the

respondent's independence of choice and right to live as she chose. The claimant in any event considered this mediation process to be a box ticking exercise and not genuine. She was angry; she felt she was being punished by not being allowed to work because she had lodged a grievance. In fact she was suspended so that the parties could work through the grievance and so mediation could be attempted despite the apparent impasse. Mediation efforts failed and in the meantime the respondent needed to cover shifts in the claimant's absence.

2.29 On 7 July 2016 in the light of the failed mediation the respondent wrote to the claimant dismissing her (pages 155 to 156). In that letter she cites breaches of confidentiality and says that the claimant did not take her seriously as her employer, being disrespectful "in assuming I can't fulfill my role as employer". The respondent felt that rather than showing concern the claimant was undermining her as an independent adult with capacity and the right to a private life, and she was undermining her as an able employer. I find that is what the respondent believed and still believes. At the same time I find that the claimant was acting in what she conscientiously thought was the respondent's best interests and out of a sense of outrage and indignation at CA's criminal behaviour and conviction.

2.30 The claimant appealed against her dismissal on 14 July 2016 (page 159 – 163). The respondent refused to entertain it by letter dated 25 July 2016 (page 164). This is not an ordinary unfair dismissal claim, nor is it a claim that the Claimant suffered detriments for whistle blowing so nothing of significance hangs on this refusal about which the claimant makes no claim.

3. The Law

3.1 The claimant claims:

- (1) Automatic unfair dismissal
- (2) Unauthorised deduction from wages and
- (3) Failure to provide a written statement of terms and conditions

3.2 Automatic unfair dismissal law: Section 103(a) Employment Rights Act 1996 (ERA) provides that a dismissal is deemed to be unfair (automatically unfair) if the reason for the dismissal, or if there is more than one reason the principal reason for the dismissal, is that an employee made a protected disclosure. An employee in this situation does not need 2 years continuous employment to make a claim. A protected disclosure is defined in Sections 43(b) and (c)

ERA. The claimant says that the protected disclosure that she is relying upon was her grievance of 30 March 2016 (pages 45 to 47). The respondent accepts that this letter was a protected disclosure so there is no need for me to go into the law in any more detail as to what one is. The issue in this case is the reason for the dismissal.

- 3.3 Health and safety dismissals: Section 100 ERA provides for automatic unfair dismissal in respect of health and safety (H&S) matters where they are reason or the principal reason for dismissal. The provision covers the situation where an employee is designated to carry out H&S duties and that applies to the claimant because she was responsible for the health and safety of the respondent. The section also covers the situation where an employee is an H&S representative or took part in relevant consultation but those situations are not applicable here. Furthermore protection against dismissal is given in the situation where there is no H&S representative and an employee brings circumstances to an employer's attention by reasonable means; this is relevant here. The relevant circumstances here could be described as being circumstances of danger that are serious and imminent which the employee could not reasonably divert such that she refuses to work, or it could be a situation where there are circumstances of danger and the employee took steps to protect herself. These latter circumstances are protected by s.100 ERA but the Claimant says she was not in personal danger. There are however enough potentially relevant circumstances to bring the protection afforded by s.100 ERA into effect. The question remains however as to what was the reason, or if more than one the principal reason, for the claimant's dismissal.
- 3.4 With regard to the wages claim, Section 13 ERA provides that an employee has the right not to suffer unauthorised deductions from wages, that is deductions that are made other than where required by law or there has been a signed prior approval by the worker/employee.
- 3.5 With regard to the provision of a statement of terms and conditions of employment within 8 weeks of the commencement of employment, an employer ought to provide an employee with a written statement of particulars and s.1 ERA sets out a list of matters that must be covered. Amongst the list is the current rate of pay (which in this case changed between 2013 and 2016). Also of importance, and it is important for issues such as protection against "ordinary" unfair dismissal, is the statement of the date of commencement of employment.

4. Application of Law to Facts

4.1 This case focuses on diametrically opposed view points in a care environment. On the one hand that of a carer and on the other a person who is cared for. The respondent is an autonomous adult with full mental capacity but who relies on carers for her personal care needs. My view is that the claimant was at all times acting in good faith, motivated both by the best interests of the respondent and by her personal outrage at CA's conduct that led to his conviction. It is not my role to, and I do not, criticise either party for holding the views and principles that they hold, on the one hand those of an individual who employs carers but wishes otherwise to maximize her independence and on the other a trained and experienced professional carer. The situation described above was one of extreme sensitivity and difficulty. It is indeed unfortunate that mediation was ineffective. We have on the one hand the respondent with the need for care and we have a very professional and highly dedicated carer who can meet those needs and yet a gulf exists between them and the relationship seems to be beyond repair.

4.2 That said, applying the law to the facts in respect of the respondent's decision to dismiss the claimant I find that the reason for the dismissal was that the respondent genuinely believed that the claimant did not respect her as an autonomous independent person living her own private life as she chose and managing her employees in her own interests (as she saw them) according to her independent will. The respondent took exception to what might unkindly be called, and nobody did call it this but it's a description, a patronising or paternalistic approach from the claimant to the respondent as if treating her as a patient or a "service user". I dislike using the latter description of a person with care needs but it is one often used in the care environment. The respondent was not prepared to accept an employee dictating to her how to live her personal life or discussing her personal affairs outside work with colleagues and her estranged family. She was, to use an often quoted expression of the moment, "taking back control". The respondent was aware of all of the circumstances that the claimant described to her in her grievance letter and she was prepared to deal with those concerns in her own way. The respondent suggested discussing those concerns with the claimant and CA or of altering CA's working arrangements, such that the fact of the complaint being made did not lead directly to the claimant's dismissal. Dismissal arose when the parties could not reconcile and resolve the differences of principle described above; furthermore the claimant was seen to take personal matters between the parties to her colleagues and particularly to the respondent's

family. She did this knowing that the family was estranged and would disapprove of the relationship between the respondent and CA.

4.3 When the parties could not agree on a working compromise, and the claimant did not accept the invitation to talk to the respondent and CA together, the respondent moved away from considering the fact of the disclosure. The disclosure itself became irrelevant. The respondent's focus then was on the claimant's behaviour in speaking to others and particularly seeking out PB, which she saw as damaging to her independence, autonomy and privacy; that is why the Respondent dismissed the claimant. The reason for the dismissal was not the fact of the claimant having raised concerns of the type and in the circumstances provided for by ss. 100 and 103A ERA. These claims fail.

4.4 On the provision of statement of terms and conditions of employment the claimant commenced new employment in July 2015 and there ought to have been a new statement of employment particulars confirming that start date and at least the current rate of pay. All other terms, in so far as they remained the same as previously, could have been adopted by reference to the earlier statement dated 2013. In fact the parties knew those terms and they knew all the other terms and conditions of employment, the claimant did not ask for a new statement, she was not refused one either. Therefore I would say that the minimum award is due, that is 2 weeks pay. It is a technical breach of the statutory requirement and the claim succeeds.

4.5 With regard to wages the respondent prevented the claimant from working from 15 April to 7 July 2016, an effective period of suspension, and only paid her up to 24 April 2016. The respondent did not pay the claimant from 25 April to 7 July 2016 in circumstances when the Claimant was ready, able and willing to fulfill her contractual obligations and had not previously signed an authority for the respondent to withhold wages. On advice the respondent refused to provide shifts for the claimant to work pending first the outcome of the grievance and then the outcome of mediation. The respondent dismissed the claimant following the unsuccessful mediation. This claim succeeds.

4.6 Two claims have been conceded, namely breach of contract with regard to notice of termination and a failure to pay holiday pay. So in summary:-

- (1) The Claimant was not automatically unfairly dismissed.
- (2) The Respondent made unauthorised deductions from wages from 25 April to 7 July 2016.

- (3) The Respondent did not pay the Claimant holiday pay due to her; two week's pay is due.
- (4) The Respondent breached the Claimant's contract with regard to notice of termination when one week's notice was due.
- (5) The Respondent failed to provide the Claimant with a statement of employment particulars; I award her two week's pay.
- (6) The Judgment of the Tribunal is that the Respondent shall pay to the Claimant the following sums:-
 - a. £768 in respect of the failure to provide written statement of terms
 - b. £82.77 holiday pay
 - c. £283.30 notice pay
 - d. Outstanding wages of £3,031.31
 - e. Total payable £4,165.38
 - f. There shall be no order as to costs.

Employment Judge T Vincent Ryan
Dated: 4th August 2017

REASONS SENT TO THE PARTIES ON

7 August 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS