



EMPLOYMENT TRIBUNALS

Claimant: Mrs G McAuley
Respondent: Santander UK Plc
Heard at: Leicester
On: 17 April 2018
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In Person
Respondent: Mr O Tahzib of Counsel

JUDGMENT

The Judgment of the Tribunal is that the claim of unfair dismissal is not struck out.

REASONS

1. This was a Preliminary Hearing listed to determine whether the Claimant's complaint of unfair dismissal should be struck out on the ground that as the Claimant continues to be employed by the Respondent the Tribunal does not have jurisdiction to hear the complaint of unfair dismissal.
2. Since the Preliminary Hearing was listed to determine the issue, the Claimant has sought independent legal advice and following such advice she has submitted written representations prepared on her behalf by Mr Edward Benson, formerly a solicitor in private practice, acting for the Claimant on a pro bono basis.
3. Mrs McAuley began her employment with the Respondent in September 2005 as a Senior Customer Resolution Manager. In 2017, following extensive discussions and consultation with the unions, the Respondent made significant changes to the terms and conditions of those who were employed in a similar capacity to that of the Claimant.
4. It is the Claimant's case that there have been very significant changes to her terms and conditions of employment which were undertaken unilaterally by her employer and which are highly detrimental to her. It is the Claimant's case

that she whilst she was a senior skilled employee on an attractive remuneration package before the changes she is now performing a role which is almost at entry level requiring little or no experience. She is also intensively line managed having lost a great deal of her previous autonomy. The Claimant's salary has been red circled for a fixed period but there are unlikely to be any pay rises in the foreseeable future. She is likely to receive significantly lower bonus payments and there will be lower employer pension contributions. The Claimant says the changes will result in a loss of seniority, managerial status and remuneration. The Claimant regards these unilateral changes as a demotion. The changes do not arise as a result of any disciplinary action. The Respondent accepts that there have been changes but the extent of the changes is in dispute as is the question of whether the changes can or do amount to any technical dismissal by reason of the changes.

5. In **Hogg v Dover College** [1990] ICR 39, the Employment Appeal Tribunal made it clear that where an employer unilaterally imposes radically different terms and conditions of employment which on an objective assessment can amount to a removal or withdrawal of the old contract, there is a technical dismissal of employment albeit that the employee continues to be engaged by the same employer.

6. In **Alcan Extrusions v Yeates** [1996] IRLR 327, the EAT referring to the principles established in **Hogg v Dover College**, made it clear that very substantial departures from the original contract are necessary for there to have been a termination of the original contract by the employer.

7. I am satisfied that the question of whether there have been changes of a nature to constitute a dismissal under the principles set out in **Hogg v Dover College** is a question of fact. That can only be determined at a final hearing after hearing evidence. Similarly the question of whether there have been 'very substantial departures' from the original contract is also a question of fact. The Court of Appeal made it clear in **Ezsias v North Glamorgan Trust** [2007] ICR 1126, that where there is a genuine dispute as to the facts it is not appropriate to strike out a claim at a Preliminary Hearing.

8. In those circumstances the application to strike out a complaint of unfair dismissal cannot succeed. It was right to list this case for such a preliminary hearing as the Claimant had not until she had obtained advice sought to rely on the **Hogg v Dover** principle (though there was a possibility that she might do so) but it is clear from the submissions prepared by Mr Benson on her behalf that she now does so.

9. Case management orders as to the future conduct of the case are given in a separate order.

Employment Judge Ahmed

Date: 28 June 2018

JUDGMENT SENT TO THE PARTIES ON

07 July 2018

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FOR THE TRIBUNAL OFFICE