



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE BALOGUN
BETWEEN:

MR V GANDY

Claimant

AND

CH & CO CATERING GROUP LTD

Respondent

ON: 29 January 2018

Appearances:

For the Claimant: Ms D Gandy, Lay representative

For the Respondent: Mr D Soames, Counsel

RESERVED JUDGMENT

The unfair dismissal claim fails and is dismissed.

REASONS

1. By a claim form presented on 10 October 2017, the claimant complains of unfair dismissal. The respondent admits dismissal but contends that it was for some other substantial (SOSR) of a type justifying dismissal – third party pressure - and it was fair.
2. The claimant gave evidence on his own behalf. The respondent gave evidence through Paul Blacker, Operations Manager, and Glenn Campbell, Operations Manager. The parties provided a joint bundle of documents and reference in the judgment in square brackets are to pages within the bundle.

The Issues

3. The issues for the tribunal to determine are firstly, whether the reason for dismissal – third party pressure – was a potentially fair reason within section 98(1) of the

Employment Rights Act 1996 (ERA) and secondly, whether in all the circumstances, the respondent acted reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant, having regard to equity and the substantial merits of the case.

Findings of Fact

4. The respondent is a catering company, providing catering in-house to a wide array of clients, one of whom is the Hillcroft College (“the Client”). The claimant worked at the Client’s site as a Chef Manager.
5. On 31 January 2017, the respondent received a written complaint from the Client’s Director of Student Services & Facilities (ES) about the claimant. ES complained that the claimant had ordered non halal chicken against her instructions and that when quizzed about this had lied by blaming the butcher, who he claimed had run out of halal chicken and so provided an alternative. [43-44]
6. Paul Blacker, Operations Manager, (PB) says that he spoke to the claimant on 10 February about the complaint and that whilst he seemed shocked and apologetic, the claimant changed his account several times. The claimant denies that such a meeting took place, or that he was shocked and apologetic on that occasion or at all, as he had done nothing wrong. PB said that he was at the Client site on that date for a pre-arranged client meeting, in which case, it would be odd that, having received the complaint about the claimant, he would not have used that opportunity to raise it with the claimant. Also, the Client’s email of 13 February 17’ makes reference to PB’s conversation with the claimant and the claimant being shocked and apologetic. [52]. I therefore prefer PB’s account.
7. PB raised the issue with ES at the meeting and sought to persuade her that the issue could be resolved. However, ES indicated that she wanted the claimant removed from site.
8. PB then embarked on his own investigation. He reviewed the claimant’s order history reports for January 2017 and these showed that during that month, he had placed orders for both halal and non halal chicken. [33-42] PB told the tribunal that there had been a directive from the Client that there should only be halal chicken on site and that the Client had told the claimant this, as had he. The claimant denies that he was ever told this and contends that the only instruction he received was to have a 50:50 split of halal and non-halal chicken. In the bundle is PB’s file note of a subsequent meeting with ES about the complaint. In the first paragraph he records a statement from ES that: “*Vince was informed only Halal Chicken*”. [88] That supports PB’s evidence to the tribunal, which I accept.
9. PB also spoke to the butcher supplier who told him that individual packets of meat are always marked as halal or non halal, which was contrary to the claimant’s assertion that the individual packets were not always labelled.

10. Having carried out his own investigation, PB was satisfied that the Client's complaint was well founded and was serious.
11. On 13 February, ES sent an email to PB setting out her concerns about the claimant. These went beyond the halal issue, although that was the most serious matter. ES considered that the halal issue was aggravated by the claimant lying to her and that this, along with the other matters, had led to a breakdown of confidence in him. ES confirmed in the email that having discussed the matter with senior management at the Client, they wanted the claimant redeployed away from the site as soon as possible. [52-53].
12. On 17 February, PB met with the claimant to inform him of the Client's request for his removal from site. In the meantime, he was placed on paid leave pending re-deployment.
13. On 28 February, PB met with the claimant to discuss the issues around his removal from the Client and to reassure him that the respondent would do its best to find him another role. The claimant was subsequently sent copies of the respondent's vacancy list [59-63]
14. On 8 March, PB met with the claimant to discuss concerns he had raised with HR about his removal from the Client. Having previously been apologetic about events, the claimant's position at the meeting was that the allegations were untrue and that the respondent should produce the evidence against him. At the meeting, the claimant was advised that if the respondent was unable to redeploy him, it would have no alternative but to terminate his employment.
15. On 9 March, the respondent sent the claimant a letter summarising the discussions and informing him that a meeting with the Client was to take place on 13 March to discuss the points he had raised. The respondent reiterated that in the absence of a suitable alternative role, he would be dismissed. [84-85]
16. On 9 March, the claimant raised a formal grievance challenging the Client's reasons for his removal, which he claimed was unjustified and done without a proper investigation [78-79].
17. On 13 March, PB met with the Client in order to put to ES the points raised by the claimant. A series of questions were put to ES and these are set out at page 90-91 of the bundle. Her responses are at 88-89. On 16 March, ES provided a statement setting out the events leading up to the claimant's removal from site and confirming that his removal had been requested due to a breakdown of trust. [98-99]
18. On 22 March, PB met with the claimant again to feedback the Client's responses to the issues he raised. He was told that every attempt had been made to persuade the Client to give him another chance but ES was adamant that he had to leave. [113-118].
19. In the meantime, the attempts at re-deployment continued and the claimant was sent weekly vacancy lists. The respondent contends that the claimant was not proactive in searching for an alternative role and did not apply for any vacancies on the lists, despite PB highlighting specific jobs he thought the claimant might be interested in. The claimant told the tribunal that the reason he did not apply for any roles was that there

were none similar to what he was doing and a lot of them involved further travel and less money.

20. Notwithstanding the claimant's lack of interest, PB arranged for him to attend 2 interviews – one for a school in Twickenham and the other in Walton upon Thames. When PB followed them up on the claimant's behalf, the feedback he received from both interviewers was that he showed no interest in the roles. Although the claimant denied that this was the case, the email feedback from one of the interviewer's suggests otherwise. [209]
21. On 10 April, the claimant was invited to attend a meeting to discuss his position. The letter warned that the outcome could be the termination of his employment. [148]. The claimant did not attend the meeting and so it was conducted in his absence by Lee Fowler, Operations Manager.
22. The outcome of the meeting was the claimant's dismissal, with effect from 9 June 2017. This was confirmed in writing the following day [158-159].
23. The claimant appealed the decision and in his letter of appeal, alleged that he had been removed from the Client to avoid a TUPE issue as the client was intending to take the service provided by the respondent back in-house [160-162].
24. The appeal was heard on 26 April by Glen Campbell, Operations Director (GC). The claimant was accompanied by a colleague. On 28 April, GC wrote to the Claimant rejecting his appeal with reasons. [198-199]
25. During the appeal hearing, the claimant was offered two roles by GC, one in a large prep school in London and the other a Chef Manager role in Walton on Thames. The claimant indicated that he was only interested in positions within a 10 mile radius of his home so the London post was rejected out of hand. The Walton on Thames position, on the other hand, fitted his geographical criteria, was at the same salary and gave more holiday than his existing role. However, he subsequently rejected it because there was less flexibility on holiday dates as holiday could only be taken outside the school term.
26. The respondent continued to send the Claimant the weekly vacancy list up until his employment end date.

Submissions

27. The respondent provided a written skeleton supplemented by oral submissions. There were also oral submissions on behalf of the Claimant. These have been taken into account.

Conclusions

28. I am satisfied from the evidence that the claimant was dismissed because of the instruction from the Client that he be re-deployed. This was therefore a dismissal for some other substantial reason of a type justifying dismissal i.e third party pressure - and therefore a potentially fair reason.

29. In Henderson v Connect (South Tyneside) Ltd [2010] IRLR 466, the Employment Appeal Tribunal held that in third party pressure cases, the fact that the client, as the case may be, acted unfairly and the employee suffered an injustice as a result does not mean that the dismissal is unfair. It goes on to say that if the employer has done everything it reasonably can to avoid or mitigate any injustice brought about by the stance of the third party, but has failed, any eventual dismissal will be fair. The example given in that case of action a reasonable employer could take to mitigate any injustice was; trying to persuade the third party to change their mind.
30. In our case it cannot be said that the Client acted unreasonably. Indeed, it was the view of the respondent that the Client's complaint was valid and based on its investigation, I am satisfied that the respondent was entitled to come to that view. I am also satisfied that, notwithstanding the validity of the Client's complaint, the respondent did the best it could in the circumstances to try to persuade the Client to change its mind, including offering to put the Claimant through a performance improvement plan as a way of allaying their concerns about future conduct. ES confirms this in her email statement of 16 March [99] However, given that the Client had lost all trust in the claimant, there was little more that the respondent could have done. Further, the claimant did not exactly help himself by openly challenging the Client's version of events and insisting that the Client justify its position.
31. The respondent made reasonable efforts to find the claimant alternative employment but was unsuccessful, largely because of the claimant's lack of interest and inflexibility. The Chef Manager role in Walton on Thames was as close a match to his existing role as he could possibly get and for him to reject it on the grounds that he did was, in my view, unreasonable and suggests that he had no interest in being redeployed.
32. I am satisfied overall that the process leading to dismissal was reasonable and that in all the circumstances, the dismissal was fair.
33. The claim therefore fails and is dismissed.

Employment Judge Balogun
Date: 8 February 2018