



EMPLOYMENT TRIBUNALS

Claimants: Ms J Adams and Mr A J Miller

Respondent: Leisure Employment Services Ltd

Heard at: Nottingham

On: Tuesday 27 November 2018

Before: Employment Judge Blackwell

Members: Mrs J C Rawlins
Mr M J Pavey

Representation

Claimant: Mr P Hargreaves, Solicitor

Respondent: Mr Bourne, Solicitor

RESERVED JUDGMENT

Mr A Miller

The unanimous decision of the tribunal is that the claim of constructive unfair dismissal fails and is dismissed.

RESERVED REASONS

1. Mr Hargreaves represented both Mr Miller and Ms Adams and he called both to give evidence. Mr Bourne represented the Respondent and he called Mr Peter Tuck, the General Manager of the Thorpe Park Caravan Site, and Mr Graham Plant who was at the relevant time the Operations Director responsible for Yorkshire and Lancashire. We have also taken into account a written statement from Katie Gower who was unfortunately taken ill and unable to give oral evidence. During much of the relevant period, Mrs Gower was then known as Mss Sharp. There was an agreed bundle of documents and references are to page numbers in that bundle.

Introduction

2. We have heard the cases of Mr Miller and his partner Ms Adams together because they are inextricably linked. However, we have decided that we will deal with Mr Miller's case first and make findings of fact that are common to both Claimants in this decision, which relates to Mr Miller only.

Issues and the law

3. Mr Miller brings a single case of constructive unfair dismissal and the issues are identified in EJ Camp's case management summary sent to the parties on 3 February 2018. In respect of Mr Miller, the issue is as follows:
 - 3.1 Was the Claimant dismissed, ie did the Respondent breach the so-called trust and confidence term and did it without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant?
 - 3.2 If so, did the Claimant affirm the contract of employment before resigning?
 - 3.3 If not, did the Claimant resign in response to the Respondent's conduct. To put it another way, was it a reason for the Claimant's resignation – it need not be the reason for the resignation?
4. The Respondent has not argued that in the alternative there was a potentially fair reason for dismissal.

Findings of fact

5. Mr Miller joined the Respondent in February 2011 and achieved a number of promotions. He was at all times well regarded as a loyal and effective employee. In early 2015, he accepted the offer of a move to the Thorpe Park Caravan Site in Cleethorpes as Owner Experience Manager.
6. His line manager was Peter Tuck. Shortly thereafter, he was joined at Thorpe Park by his partner, Jeanette Adams in a new role as Lettings Manager.
7. Ms Adams subsequently became Park Entertainment Administrator and was in that role at the relevant time.
8. The Respondent operate caravan parks throughout the United Kingdom and at the relevant time there were 11 caravan parks in Yorkshire and Lancashire for which Mr Plant as Operations Director was responsible.

9. Mr Miller deputised for Mr Tuck (the General Manager of Thorpe Park) when Mr Tuck was absent through holiday, for example.
10. The relationship between Mr Miller and Mr Tuck seems to have been a good one, at least up until April 2017. On 14 April 2017, a new leisure facility called 'The Barn' was opened and proved to be a great success. Both Mr Miller and Mr Tuck were justifiably pleased with its construction and successful opening.
11. Mr Miller and Ms Adams were provided with accommodation at Thorpe Park during their working period, their home being some 70 miles away.
12. It appears from that point that the relationship between Miller and Tuck soured. Although Ms Adams had Mr Miller as her line manager, she also asserts that the relationship went wrong. Ms Adams formed the view that Ms Halifax, who was both Mr Tuck's partner and Mr Miller's niece and a junior employee at Thorpe Park, was after Ms Adams's job. She describes it as a woman's intuition.
13. Mr Miller states that on 8 April 2017, he was sent a text message from Mr Tuck indicating that he was going to change the iBuy purchasing system used by the Respondent so as to remove Mr Miller from the approval chain in relation to the maintenance function which was part of Mr Miller's responsibilities. It is common ground that he would remain as a "watcher" and it is also common ground that Mr Tuck did not consult with Mr Miller prior to his requesting the change in the system. Mr Tuck gave evidence that it had unforeseen consequences that went beyond the simple move he had requested. Mr Tuck's evidence, which we accept, is that his sole motive was to prevent Mr Miller being troubled unnecessarily. He said, and we accept, that Mr Miller would remain in control of any purchase for which he had responsibility.
14. On 26 April, Mr Miller and Ms Adams returned to work to find that their desks had been moved and put into storage pending a move into a new office as had been planned. Mr Miller and Ms Adams allege that although the desks were in a storage area, they had been broken into. We accept Mr Tuck's evidence that that is an exaggeration. They had been moved and the drawers removed but the desks had not been broken into; they had been opened by maintenance and put into a secure area.
15. Mr Tuck did not consult with Mr Miller or Ms Adams before having the desks moved. Mr Tuck's evidence, which we accept, was that he was trying to help, the move had been agreed and it was simply a question of implementing an agreed plan.
16. Both Mr Miller and Ms Adams were on duty for the bank holiday weekend which commenced on 28 April. We accept that it was a very busy weekend and there were a number of unforeseen problems which had to be dealt with, eg a burst watermain, misbehaviour by a football team and a

failure on the part of the caterers. Mr Tuck was on leave that weekend, it being his birthday.

17. Both Mr Miller and Ms Adams were due to take days off on 1 and 2 May but came in on 1 May. Mr Miller alleges that when Mr Tuck arrived "*he had a look of anger on his face*". Ms Adams uses the same phrase though she was not present. According to Mr Miller, Mr Tuck immediately confronted him with the statement that he had received 16 emails of complaint from owners. Mr Tuck's evidence is that because he had had a very pleasant birthday weekend, he was in a good place and was not angry and simply drew the attention of Mr Miller to complaints which had appeared on Facebook (not emails). He had done so because it would be Mr Miller's responsibility to respond to the Facebook complaints.
18. As indicated above, Mr Miller was Ms Adams's line manager and had been responsible for her rota in terms of working hours and holiday. There had been a complaint of favouritism a year before raised by Wendy Burchell which had been dealt with by Mr Tuck who did not believe that the complaint had substance.
19. Ms Burchell again complained in late April of favouritism on Mr Miller's part in relation to Ms Adams and she made that complaint to Mr Tuck. Mr Tuck therefore emailed the cashier indicating that he wished her to deal with Ms Adams's rota principally in order to prevent the claim going further. He said in evidence, and we accept, that again he did not believe there was any substance in the complaint and he acted merely to nip the matter in the bud so as to protect Mr Miller and Ms Adams.
20. We accept Mr Tuck's evidence in that regard and we also accept that it did not alter the relationship of line manager as between Mr Miller and Ms Adams. Further, although the cashier would appear to be organising Ms Adams's rota, the reality was that it remained with Mr Miller.
21. Both Mr Miller and Ms Adams understood this change to be calling their honesty into question. There is no objective justification for that conclusion. We also note that it is common ground that Mr Miller was invited to discuss the issue with Mr Tuck but he did not do so.
22. Mr Miller and Ms Adams appeared to have reached the joint conclusion at that point that there was a conspiracy to remove them from Thorpe Park. Again, we can see no objective justification for that conclusion.
23. Accordingly, Mr Miller on 3 May (at page 46 in his bundle) emailed Mr Plant and requested a move back to a Yorkshire park. He says:

" ...

I don't feel it is right to put all the reasons on an email I would sooner sit down and talk it through with you but the reason for my decision is Peter Tuck.

There have been many situations that have arisen over the past two and a half years but the last straw was being left to run the park for three days while the general manager decided to take off the bank holiday weekend while we had major issues with the footballers and many other problems on the park. For him then to come back and publicly criticise all the great people who had been worked so hard (sic) under immense pressure was a bridge to (sic) far for me.

...

24. This is plainly an exaggeration even on the evidence put forward to This Tribunal by Mr Miller.
25. It is common ground that Mr Plant advised Mr Miller to go away and enjoy his holiday and that it would be discussed on his return. Mr Plant's evidence was to the effect that he thought that the holiday and a chance to reflect would result in Mr Miller changing his mind.
26. On the next day, Mr Miller met Mr Tuck and simply informed him of his decision to move and requested his help in effecting a transfer to another park. He did not give the real reason for his wish for a transfer and explained it as family reasons.
27. Ms Adams was present at this meeting but did not speak. Ms Adams and Mr Miller both say that Mr Miller expressed concerns about comments on Ms Adams's performance. Mr Tuck has no recollection of such a conversation. Save that Mr Miller said: "*If he heard anything bad about either him or Jeanette then he'd cause trouble for me*".
28. It is common ground that Mr Miller informed Mr Tuck that they were going on leave immediately, ie two days before their booked holiday.
29. Mr Tuck's evidence was that he was completely taken aback by the meeting. He formed the conclusion that neither were going to return to Thorpe Park and he accordingly changed the password on both of their accounts in order to protect the business. Mr Miller and Ms Adams were informed of this by telephone on their way home, not by Mr Tuck but by a team member.
30. Both Ms Adams and Mr Miller complained of texts that they received during their holiday (for example 128 in Mr Miller's bundle) and they had formed the view (again in our view without objective justification) that the source of these texts must have been Mr Tuck.

31. Both returned to work at Thorpe Park on 17 May, Mr Miller to attend a training session that Mr Plant had requested he attend when they last spoke before the holiday.
32. Mr Miller alleges that he was blanked by Mr Tuck. Mr Tuck's evidence was that he was surprised to see Mr Miller because he believed he would not be returning. Mr Plant had not informed Mr Tuck that he had requested that Mr Miller attend the training day.
33. Also on the same day, there was a further telephone conversation between Mr Miller and Mr Plant. Ms Adams reports that conversation as follows in her proof of evidence:

“Andy relayed the conversation to me and explained about the pay decrease if he were to transfer which was a shock in itself and then the bombshell Graham Plant asking Andy if I would be resigning as there were no jobs available on any of the Yorkshire parks. I was in shock and couldn't speak for a while trying to absorb what I had just been told. I felt totally crushed, unvalued and upset that I was being dismissed without any attempt to assist me moving back to Yorkshire with Andy. ...”
34. Mr Plant gives a different version of events. He accepts that he asked if Ms Adams would be resigning and accepts that it was an insensitive comment. He denies saying that there would be no jobs available and from all the evidence we have heard, it is abundantly plain that he would not have made such a remark because the likelihood was that there were jobs available.
35. On 18 May at page 54 of her bundle, Ms Adams forwards a grievance to Mr Plant. Mr Plant did not respond and he accepts that he should have done. Ms Adams then subsequently emailed the grievance to the HR Department (see 55 and 56). Contrary to Ms Adams's evidence, her grievance was acknowledged by Katie Sharp at page 56D on 25 May.
36. We should note that Mr Miller's email of 3 May to Mr Plant was treated as a grievance and was again picked up by Ms Sharp.
37. In both instances, Ms Sharp explored at considerable length with Mr Miller and Ms Adams the basis for the grievance so that they could be properly understood. In Mr Miller's case, we see a document which Ms Sharp describes as 'grievance discovery' beginning at page 47 which she then, with Mr Miller's permission, gave to Mr Tuck. She proposed that there should be a 'clear the air meeting' between Messrs Tuck and Miller at which she would be a facilitator.
38. That meeting took place on 7 June and was obviously a lengthy and detailed affair. The notes, which are accepted by Mr Miller, are at pages 72 to 82. Ms Sharp took the parties through the various grounds of

complaint and Mr Tuck explained his position with responses by Mr Miller, some of which were accepting and others were not.

39. It is clear from the meeting that Ms Sharp is prepared to criticise both Mr Tuck and Mr Plant where she feels it is justified. For example, she explains that Mr Plant wished to apologise for the resignation remark and was prepared to do that with both Mr Miller and Ms Adams. The summary on page 83 is as follows:

“Katie summarised the end of the meeting. Peter wants you at Thorpe, and has apologised for the misunderstandings which all seem to link to communication which we all have agreed with. Andy now needs to decide whether he can move past this, the role at Thorpe is there and has always been there or there is an opportunity at Reighton. Agreed that Andy would consider his options and come back to me on Friday with a decision. Assured Andy that everyone wanted to make this work.”

40. Also on 7 June, Ms Sharp met with Ms Adams. Her notes begin at page 56E of Ms Adams’s bundle. It is common ground that it was arranged at short notice and Ms Adams has taken offence that her treatment in that regard is not the same as that of Mr Miller. However, it seems to us that albeit that the meeting is at short notice, it is very thorough. We note also that Ms Adams says that at one point: *“What’s happened to him is what has happened to me”*.
41. It is clear that Ms Adams had the genuine belief that she felt worthless because of the way in which she had been treated and the way in which Mr Miller had been treated. Ms Sharp offers a meeting with Mr Tuck in the same way that had just happened with Mr Miller but Ms Adams declined.
42. Ms Sharp writes to Ms Adams on 12 June with an outcome to Ms Adams’s grievance. It is, as is the case with all Ms Sharp’s work, thorough, professional and objective. She deals with each of the grounds of Ms Adams’s grievance, putting forward the explanations given by Mr Tuck face to face with Mr Miller. She also offers two weeks’ paid time off to enable Ms Adams to focus on gaining another position.
43. On or about 14 June, Mr Miller accepts a transfer to Reighton Sands, albeit at a reduced salary. By email Ms Adams indicates that in the light of that transfer, it would be out of the question for her to return to Thorpe Park and that she was considering her position.
44. It is clear that Ms Sharp took legal advice and elected to appeal the grievance outcome.
45. This she did at pages 73 and 74 by an email of 16 June.
46. An appeal hearing was arranged and conducted by Sue Davies (the Head

of HR) on 26 June and the minutes are at pages 85 to 89 of Ms Adams's bundle. The principal grounds of discussion were Mr Tuck's behaviour, the cut in pay for Mr Miller as a consequence of his transfer to Reighton Sands and the joint contention of Ms Adams and Mr Miller that it has been the Company's practice to create jobs for partners where the other partner has moved camps (see page 85). At page 85, Ms Adams gives three examples, which we shall return to in our conclusions.

47. The grievance appeal outcome letter is at page 93 and is dated 3 July.
48. That led to Ms Adams resigning by email of 10 July at page 94.
49. The two operative paragraphs read as follows:

"I feel I can no longer work for you due to the suggestions that you made to Andy regarding 16 emails regarding my performance and also a letter sent Hemel raising a complaint that Andy showed favouritism towards me. This letter and the emails have never been shown to either me or Andy and it has been confirmed that the letter was never received at head office.

The reason for my leaving Thorpe Park and the company is due to the unfair treatment and discrimination shown to me by Bourne Leisure in light of Andy's request to transfer to another park and the suggestion I should resign from the company if Andy took the job at Reighton Sands. I find this unacceptable in light of all the positions that have been made available to other team members with partner's in similar circumstances, this option was not made available to me.

..."

50. Meanwhile, Ms Sharp has summarised Mr Miller's position by letter of 12 June sent to Mr Miller which in turn led to the acceptance by Mr Miller of a transfer to Reighton Sands.
51. Although Mr Miller began work on or about 15 June at Reighton Sands, the formal offer was dated 22 June (at page 93) because an additional bonus described as "Achieving an Overall Park Handover Advocacy of 95.0% or higher" was added by Mr Plant in order to some degree to meet Mr Miller's complaints of a pay cut.
52. Some 4 weeks later by email of 18 July, Mr Miller resigned and we see the contents of his resignation letter at pages 97 and 98 of his bundle.

Conclusions as to Mr Miller

53. We remind ourselves of the issue set out above in relation to constructive unfair dismissal. Put another way, it is our function to look at the

employer's conduct as a whole and determine whether it is such that its effect judged reasonably and sensible (ie objectively) is such that the employee cannot be expected to put up with it.

54. As to the events that led to Mr Miller requesting a transfer from Mr Plant on 3 May, we repeat the findings of fact made above.
55. We refer in particular to the "clear the air meeting" of 7 June and the discussion on each point of complaint that took place. We commend Ms Sharp for her thoroughness and the honesty of the discussion that took place between Mr Tuck and Mr Miller. However, it is clear that on Mr Miller's evidence he had at that point completely lost faith in Mr Tuck. Thus, there was a choice either to leave the Respondent's employment entirely or to accept a transfer to Reighton Sands at a lesser salary. Mr Miller took the latter option but resigned with the following additional matters in mind, namely that he concludes that Mr Tuck's behaviour was "*clearly designed to drive me from my employment*".
56. Having heard Mr Tuck's evidence and reviewed the evidence up until 3 May, in our view there is no basis for that allegation. Mr Tuck in his words endured a year of hell after Mr Miller's departure because he took much of the burden of the extra work. Thus, there is no objective basis for Mr Miller's allegations.
57. The second matter is the treatment of Ms Adams and in particular the alleged failure "*contrary to normal practice an offer was not made to my partner Jeanette*".
58. He then complains of the pay cut and indicates that he has been treated differently to Trevor Bowden, who was a marketing manager transferred from the bigger Thorpe Park to the smaller Reighton Sands and yet kept the same salary. In that regard, Mr Plant's evidence was clear. Because there were expansion plans at Reighton Sands, Mr Bowden had an opportunity to market the Park to new owners. In contrast, Mr Miller's role was operational and therefore depended on the number of owners. The logic therefore was that a salary at a smaller park for an operations manager was bound to be less. We accept that evidence.
59. As to the allegation that there was a Company practice of finding partners roles even if it was necessary to create a role, the examples advanced jointly by Mr Miller and Ms Adams were firstly Mr Tuck himself and his partner, Laura Halifax. Their assertion was that a job was created for Laura Halifax. In Ms Adams's appeal outcome letter, Ms Davies addresses the matter as follows:

"... Laura Halifax was already a Pioneer and completed most of the training delivery at Thorpe Park and was therefore put into the new role of Park trainer and administrator. ..."

That evidence was confirmed by Mr Tuck.

60. The second example was Richard Bates and his daughter. Ms Davies explanation again confirmed by Mr Tuck was that Mr Bates's daughter worked for a season in 2016 within the maintenance team and Richard had 'phoned a month previously from her being employed to say if any suitable role becomes available, could she be considered and this is exactly what happened a month later. In 2017, she was offered a permanent role in the Hub team.
61. The final example was Trevor Bowden. Ms Davies says:

"Trevor Bowden was asked to move from Thorpe Park to Reighton Sands which is a completely different scenario and Verity Hull moved to an already vacant Caravan Sales Person role on park."
62. Mr Plant gave clear evidence that there was no general policy requiring the Company to facilitate partners moving to the extent of job creation. He also said that the position was plainly different where it was the Company wanting the individual with a partner to move, as was the case with Mr Bowden.
63. Although we accept that Mr Miller and Ms Adams did genuinely believe that there was such a policy, that belief was mistaken having regard to the evidence that we have heard.
64. Returning to Mr Miller's resignation letter and the reasons therefore, the only matter of which he was not aware prior to his move to Reighton Sands was, according to his assertion, that the bonus in respect of handover advocacy was not achievable. He gave no evidence in support of that contention and Mr Plant was of the view that the bonus was achievable and indeed was achieved by 80% of the Respondent's parks throughout the country. In our view, Mr Miller is simply putting forward this assertion so as to create a last straw. We do not accept that it was.
65. Whilst we accept that Mr Tuck could and should have communicated some of this decisions better and that Mr Plant should have at least acknowledged Ms Adams's grievance. It seems to us that looking objectively at the whole course of events, the employer has acted generally with reasonable and proper cause and where it has not, this falls far short of a breach of the implied term of trust and confidence.
66. We particularly commend Ms Sharp for her work throughout this rather sad case. She has done everything she could to resolve the concerns of Mr Miller and Ms Adams in a thoroughly professional and comprehensive manner. It is a pity that her efforts went unrewarded.
67. Although it is not necessary to deal with affirmation, in our view it is clear that Mr Miller affirmed the contract by accepting the role at Reighton

Sands and the offer set out in the letter of 22 June. His later assertion that the bonus was not capable of being achieved does not alter that position.

Employment Judge Blackwell
Date 18 December 2018

JUDGMENT SENT TO THE PARTIES ON

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