



EMPLOYMENT TRIBUNALS

Claimant: Mr C Brooks

Respondent: B Braun Medical Limited

HELD AT: Sheffield

ON: 23 January 2019

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr M Warren-Jones, Solicitor

JUDGMENT

The claim of unfair dismissal is hereby dismissed on withdrawal by the Claimant.

REASONS

1. At the outset of the case the Tribunal explained to the Claimant the law relating to constructive dismissal, which is principally contained in section 95(1) Employment Rights Act 1996 subsection (c), which states that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
2. The Tribunal explained to the Claimant that the conduct of the employer had to amount to a fundamental breach of contract and referred the Claimant to the dictum of Lord Denning MR in **Western Excavating (ECC) Limited v Sharp** [1978] ICR 221. It is not necessary here to quote verbatim the words of Lord Denning, save to say that if an employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer

intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance.

3. In this case the Claimant was a full-time employee but because his mother was extremely unwell he had to reduce the time that he was working from five days to two days and after consideration the Respondent agreed to that. What was fundamental to that agreement was, firstly, that it was a permanent agreement and, secondly, that there was no arrangement should the Claimant's circumstances change whereby he could return to his full-time employment. Business had to go on whilst the Claimant was on his flexible employment and unfortunately his position effectively was filled.
4. Happily the Claimant's mother made a recovery sufficient to allow the Claimant to ask his employers, that is the Respondents, if he could return to work full-time. It was a problem that the Claimant had to so ask his employers. They were under no obligation to take the Claimant back full-time. They did offer him a temporary contract, but after consideration, and understandably, the Claimant turned the offer down and left the employment of the Respondent.
5. It was obvious from this chain of events and the rather more significant detail that came out when the Claimant gave his evidence that however the Respondent did behave towards the Claimant, and the Tribunal is not asked to adjudicate on that, save to say that there was no fundamental breach by the Respondent, the Respondent was entitled to do what it did.
6. The Claimant gave his evidence in chief in full and the Tribunal asked him a lot of questions. Before the Respondent had the opportunity to cross-examine the Claimant the Tribunal discussed the state of the Claimant's case with the Claimant and gave the Claimant time to consider whether he should pursue the claim further or not and in so doing his partner was present. Time was taken by the Claimant, the Tribunal believes, sufficient for the Claimant to discuss matters and if he wished with his partner.
7. The Claimant came back to the Tribunal after the Tribunal had broken for 15 minutes or so and he then indicated that he had taken into account what the legal position was with regard to his claim for constructive unfair dismissal and he

indicated that he would withdraw his claim. The Tribunal is of the opinion that what the Claimant has done is very much to his credit and indeed there is much about the facts of the case for which the Claimant can be justifiably proud. Unfortunately for him that did not bring him the result which he wished for here.

Employment Judge Shulman
Date 31 January 2019

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