



# EMPLOYMENT TRIBUNALS

**Claimant** Ms E Carruthers

**Respondents** (1) Bristol City Council  
(2) The Governing Body of Redcliffe Nursery School

## ORDER AT PRELIMINARY HEARING

**Heard at:** Bristol

**On:** 28 September 2018

**Chairman:** Employment Judge M Ford QC

### **Representation**

For the Claimant: Mr T. Sheppard, Counsel

For the Respondents: Ms K. Fryer, Solicitor

## JUDGMENT

The judgment of the Tribunal is that the Respondent's applications for a deposit order under rule 39 of the Tribunal rules is refused.

## REASONS

### **Background**

1. In a claim form received on 11 July 2018 the Claimant complained that she had been constructively and unfairly dismissed for the purpose of s.98 of the Employment Rights Act 1996 ("ERA").
2. In its response sent on 14 August 2018 the Respondent denied the claims. It explained that complaints were made by someone called "AB" under the whistleblowing policy, which led to an investigation into the Claimant by an independent investigator, Chris Few, and subsequently by the internal audit team.

3. The Respondent made an application in a letter dated 21 August 2018 for a deposit order of £1000 on the basis that there was little reasonable prospect of the Claimant establishing that the Respondent was in fundamental breach of her contract. For the purpose of the hearing both parties provided me with a few documents, but I heard from no witness.
4. I take the background from the pleadings. The Claimant was head teacher at Redcliffe Nursery School from 1 May 2006 and, from 2015, Executive Head Teacher. She resigned by letter dated 21 March 2018.
5. The background to the matters which led to the Claimant's resignation is recorded in her clam form. She was suspended on 5 July 2017 owing to allegations of misconduct. The matters related to a trip to China and allegations that the nursery was being mismanaged. The investigation was conducted by Chris Few, an external investigator, who conducted an investigation meeting with the Claimant on 25 July 2017.
6. The Claimant was sent minutes of the meeting and provided her comments on 16 October 2017, raising various complaints about the investigation (see Grounds of Complaint, paragraph 10).
7. On 15 December 2017, Sue Rogers (Service Direction, Education and Skills) provided a list of ten further allegations of financial concerns to be investigated, this time by the Council's audit team. The Claimant says she received no further details about these allegations.
8. On 19 March 2018 according to the Claimant, Sue Rogers phoned her trade union representative (Rachel Bull) and told her she had a draft report which made serious findings against the Claimant, which would result in her summary dismissal if the Claimant did not resign. According to the Claimant she was given a two-day deadline within which she was to resign or face a disciplinary hearing at which the "only outcome would be summary dismissal" (Grounds, paragraph 17). The Claimant was not shown the draft report.
9. The Claimant resigned on 21 March 2018 in light of what, according to her, had been said to Rachel Bull. The Respondent, it should be noted, denies that Ms Rogers said that dismissal was inevitable in her conversation with Rachel Bull or that she required the Claimant to resign. Nonetheless, the Claimant is partly corroborated in her account by an e-mail shown to me of 21 March 2018, from Sue Rogers to Jane Burstow.
10. The Claimant relies on a breach of the implied term of trust and confidence. The facts said to support that contention are set out at paragraph 21 of the Grounds. They include suspending her, continuing to suspend her, delay in the investigation, failing to have regard to her well-being, presuming her guilt, failing to discuss all the allegations, adding other allegations to the investigation hearing, failing to seek the Claimant's account of the extra allegations, Sue Rogers stating that she would make official the draft report

without discussing it with the Claimant, and the undue pressure Sue Rogers placed on the Claimant to resign.

**Legal principles**

11. The grounds for making a deposit order are set out in rule 39(1). A deposit order may be made where a tribunal considers an allegation or argument has 'little reasonable prospect of success', a lower threshold than applies to striking out a claim. Nonetheless, there must be some proper basis for taking the view that a claim has little reasonable prospects of success. While a tribunal is entitled to have regard to the likelihood of a party establishing facts essential to their claim, it should bear in mind the danger of a mini-trial on the facts. Nor should a deposit be used as a backdoor means of striking out a case, a result which can be mitigated by taking account of a party's ability to pay. A tribunal must make reasonable enquiries into a paying party's ability to pay and have regard to that information before making a deposit order (rule 39(2)).

**Conclusions**

12. In light of those legal principles I refused the application for a deposit order. First, the allegations involve disputes of fact, including what was said on the phone on 19 March 2018 by Sue Rogers. On the material before me, there are reasonable grounds for believing that the Claimant will show, on the facts, that her account is correct. Second, Ms Fryer accepted that if the Claimant's account of what was said to her on the phone were correct, this could amount to, or be relevant to, a breach of the implied term of trust and confidence. Third, I do not consider that there is sufficient material before me on which I can conclude that the other allegations in the claim about breach of the implied term, which involve disputes of fact about the suspension and investigation, have little reasonable prospect of success. Fourth, the issue about why the Claimant resigned itself will require a detailed factual analysis.
13. In light of the above I made further Case Management Orders. These are set out in a separate document.

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Employment Judge M Ford QC

Dated 28 September 2018