



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Craggs

**Respondent:** George Bolam Foods Limited

**Heard at:** Teesside

**On:** 7 December 2017

**Before:** Employment Judge Pitt

***Representation:***

**Claimant:** In person

**Respondent:** Mrs E Coney

## REASONS

- 1 The claimant was employed by the Respondent from 22<sup>nd</sup> April 1997 until her resignation on 6<sup>th</sup> June 2017. She makes a claim for unfair dismissal, namely that she was entitled to resign and claim she was constructive dismissed. I heard evidence from the claimant, Mrs. E Coney, Mr. Darren Coney and other members of staff as to Mr. Coney's attitude and behavior towards them. I had before me a small bundle of documents.
- 2 The respondent is a family run business, selling fresh produce to the public, this included meats, fresh vegetables and a delicatessen counter. The company was established by Mr. George Bolam. At the time of her resignation the claimant was supervisor in the delicatessen counter.
- 3 In 2013 Mr. Darren Coney, who is married to Mrs. Coney nee Bolam, came to work for the business Mrs. Craggs complains that once Mr. Coney became involved he bullied her and harassed her as set out in her witness statement. This seems to have started in March 2015 following the death of Mrs. Beatrice Bolam, Mr. George Bolam's wife. The claimant had produced a remembrance book for the family. Having sought Mr. Coney's advice as to when it was best to hand the book over and being told to leave it for a while, the claimant decided to hand it over in any event. She complains that Mr Coney aggressively pointed in her face and said, "I told you George isn't ready".
- 4 She makes complains that Mr Coney made comments about the way she did wanted to change her displays. Further she complains that he would allow her to carry blocks of cheese of 20kgs and meat of 6-10kgs. On one occasion when the deli was unstaffed for a short period save for one employee Darren had shouted at her and asked where she had been. She said that made her feel like she was 5 years old. It came to light

during the hearing that the claimant had kept a diary of the events, however she had not brought it today. Nor had the respondents had sight of it, although they were aware of its existence as the claimant had it with her and referred to it during her grievance hearing

- 5 In 2016 the claimant was reprimanded, informally, by Mr. Coney for over ordering a stock of jams and chutneys. The claimants account was it was the way that it had been stored meant customers could not see it and there had not been a failure in ordering
- 6 In 2016 Environmental Health Officers attended at the premises to carry out a spot inspection. As a result of an inspection of the deli or partly because of the deli area the environmental health downgraded its hygiene rating from a 5 to a 3. The results were not known for some months but once the respondent were aware in March 2017 the claimant and two other employees from the deli counter were the subject to disciplinary proceedings.
- 7 There are criticisms to be made of the disciplinary proceedings. The environmental health report was only handed over on the morning at the meeting; further, although Mrs. Coney was conducting the hearing, prior to making her decision she went to speak to all members of the management team to discuss the decision. It was decided that a final written warning should be imposed. The claimant appealed the decision and it was changed to a verbal warning. The claimant was of the view that the matters of concern were not within her remit and that she should not have been subject to any disciplinary proceedings.
- 8 During the period of the disciplinary process the claimant was absent due to ill health, due to stress. During this period she made a formal complaint about Mr. Coney and his bullying behaviour. This complaint was dealt with promptly by the respondents. Although the conclusion of the grievance was that the allegations were not substantiated, the respondent concluded that there was potential that if a member of staff felt they had been bullied that they would not approach the respondents because a complaint was to be made to another a family member. As a result of that complaints were now to be made to Mr Colburn.
- 9 When the claimant returned to work on 16 May she says she was uneasy and accepts that Andrew Bolam was put in to assist her. .
- 10 During the next three weeks the claimant complains that Mr Coney gave her the cold shoulder, that he reprimanded her for making too much coleslaw and for producing too many pizzas. She says the final straw was when Mr George Bolam said to her, "You shouldn't have done that to Darren". That was the final straw and the result of which she resigned five days later.
- 11 In order to determine whether or not there is a claim of unfair dismissal I have to first of all examine the resignation by the claimant.

#### The Law

- 12 **Western Excavating v Sharp [1978] ICR 121** states there must be a repudiatory breach which is a fundamental breach of contract on the employer's part. This must have caused the employee to resign and that the employee did not delay in so doing. The case of **Mahmood v BCI [1997] IRLR 407** explains the test is without reason and proper cause the employer conducted himself in a manner calculated and likely to destroy

or seriously damage the relationship of trust and confidence. In **Omilaju v Waltham Forest London Borough Council [2005] ICR 481** says in a last straw case the last straw need not be blameworthy conduct of itself although it usually is, it must contribute to the breakdown in the relationship and my findings are as follows.

Discussion and Conclusion

- 13 It is clear on the evidence that I have heard from the claimant and Mr Coney that their relationship was fraught. I am satisfied however having heard from numerous witnesses about the behaviour of Mr Coney it is clear he may on occasion raise his voice.
- 14 However I am not satisfied as to the claimant's complaints for the following reasons. She was unable to particularise all of them, her evidence was of a general nature save for the specific matters referred to above. It was disappointing that I was unable to see the notebook as this may have assisted the claimant in her evidence, although I could take into account she had kept a diary it wasn't conclusive as to Mr. Coney's behavior.
- 15 Mr Coney does accept that he spoke to the claimant about the remembrance book saying that he was disappointed because it had had a ripple effect on the family and he said he did speak to her a little louder than he was speaking to me during the tribunal hearing. As to changes, he says he was under pressure from the Environmental Health for the changes to be made. As to the carrying of large items he said that she had worked in the factory shop for a number of years and the claimant had always carried her own and she never sought any help from him. As to the time off, this was requested the week before. I accept Mr Coney's explanation that if there was going to be understaffing he was entitled to refuse that. In relation to the extra jars of chutneys I accept that they were displayed on a table and that the excess were displayed where they could not be seen. It may well be that is the reason why they were not sold rather than an overstocking issue
- 16 I looked at whether or not the disciplinary could form part of a series of bullying or behaviour. I can criticise the company because they did not hand over the environmental health report until the hearing itself and also because Mrs Coney asked other members of the management team what her recommendation should be before she issued a final written warning.
- 17 I am satisfied that a proper appeal was introduced which allowed the claimant an opportunity to state her case, as a result of which the final written warning was reduced to a warning. In addition criticism may be levelled at the respondent for not taking action against bakery staff, the bakery having also been criticized by the Environmental Health Report. Mrs. Coney evidence was that she accepted the managers explanation for the breach in his department. She also accepted that the claimant's account of two of the matters which were alleged against her.
- 18 I looked at the issue of the grievance itself, the respondents clearly dealt with it promptly. It was dealt with by a member of the family. It may well be that this could be a matter of criticism. However, the respondent conducted a thorough investigation and concluded that the grievance was not upheld because there was no corroboration of the claimant's allegations.
- 19 As a result of that investigation the company concluded that there may be

a potential where staff would not report because they were reporting against a member of the family to another member of the family. The respondent therefore altered their policies and procedures in order to allow for the factory manager Paul Coburn to deal with such matters.

- 20 The claimant returned to work and upon return to work she complained about the behaviour of Mr George Bolam. Although I suspect that she was spoken to by Mr Bolam in the terms that she sought I am not satisfied that he spoke to her in such a way that it would be an act of breach of contract. The evidence I have heard in relation to Mr Bolam is that he considered Mrs Craggs to be a member of the family. I cannot conceive that he would say the words that are attributed to him in the manner of which she says. She also complains in her resignation letter that she still had been subjected to bullying and harsh comments from Mr Coney and Mrs Coney made her the subject of undue treatment regarding the grievance.
- 20 I will deal with the disciplinary first. I do not think it was undue treatment from Mrs Coney although I have already criticized it. She was given a final written warning for what could be considered serious failings although she was given the benefit of the doubt as well. However she was allowed to appeal that written warning and it was downgraded.
- 21 Second, turning to the behaviour of Mr Coney. There is an acceptance from Mr Coney that he asked another member of staff to speak to the claimant in regards to the quantity of coleslaw she was making. He said she had made ten days worth and Mrs Craggs has not contested that, she accepted she made a substantial amount. Mr Coney's view is that the shelf life is three days and there should be a quantity made little and often. The other comment she attributes to him is about making pizzas. Mr Coney cannot remember this although I suspect he did make some comment about being over production of pizzas.
- 22 I have looked at the complaints and I am satisfied that there was a conflict between Mr Coney and the claimant once Mr Coney arrived and started to make changes to the claimant's domain. This clearly brought them into conflict with each other. However, once the claimant had raised the matter with the respondents they dealt with it in an appropriate manner by commencing grievance proceedings in dealing with it. Having found that the grievances were not upheld however, that was not the end of the matter. They went on to determine that their policies needed to be rethought and they set out new policies and put in new procedures to bypass the family element.
- 23 I have to consider whether the conduct was such that it was calculated and likely to destroy or seriously damage the relationship and it was without proper cause. I am satisfied that where there was any conflict between Mr Coney and the claimant it was this clash of personalities of the running of the deli store and in those circumstances it was not calculated or likely to destroy or damage the working relationship.
- 24 Turning to the period when she returns back to work Mr Coney was clear that he tried to distance himself and that is why he got Ms Spinks to speak to the claimant about the coleslaw. That seems perfectly proper action bearing in mind the history between the two. The only other complaint is to do with pizzas and again whilst I think it probably was said, I am not satisfied that it was in a bullying or harassing manner.

- 25 The final complaint, against George Bolam, who was not here to answer the complaint. I accept he probably did say something to the claimant about raising the complaint against Darren. However I do not think in effect it was a last straw or blameworthy conduct. On the evidence I have heard Mr Bolam was fond of the claimant and quite properly probably raised with her the reason behind her decision.
- 27 In all the circumstances therefore I am not satisfied that the respondents acted without reasonable and proper cause in a manner that was likely to destroy or damage the working relationship.
- 28 However even if Mr Coney had dealt with the claimant in the manner described prior to the claimant going on sick I am satisfied that the respondents put in place such measures as were proper to deal with the matter once she returned from sick leave by in effect transferring line management to Andrew Bolam with whom the claimant seems to have had a good working relationship. I concluded therefore that that is a cut off in terms of the previous behaviour of Mr Coney if there was any. There are two further criticisms of Mr Coney after that time, neither of which I considered were so serious to entitle the claimant to resign. As to The final comment by Mr Bolam whilst I accept it was said I did not accept the claimant's representation of it. Even if it were so I did not consider that even with the previous two incidents it was such to entitle the claimant to resign.
- 30 I concluded that the claimant was not entitled to resign and therefore he claim for unfair dismissal must fail.

**Employment Judge Pitt**

**Date 26<sup>th</sup> January 2018**