



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**  
Mrs V Hopkins

**Respondent**  
**AND** Department For Work & Pensions

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Carmarthen      **ON** 14 January 2018

**EMPLOYMENT JUDGE NW Beard (Sitting Alone)**

### Representation

**For the Claimant:**      **In Person**  
**For the Respondent:**      **Miss J Williams (Counsel)**

## JUDGMENT

**The judgment of the tribunal is that:-**

The claimant's claim of unfair dismissal within the meaning of Sections 95(1)(c) and 98(4) of the Employment Rights Act 1996 is not well founded and is dismissed.

### **Preliminaries**

1. The claimant claims that she has been unfairly dismissed, arguing that she resigned in response to the respondent's breach of contract; a constructive dismissal. The respondent contends that there was no breach and that the claimant resigned; there was no dismissal. The respondent contends that if there was a breach then the claimant affirmed the contract. The claimant was represented at the hearing by Mr Pugh, a trade union representative, and the respondent was represented by Joanne Williams of counsel. The claimant gave oral evidence herself and the respondent called Miss Gwyn. I was provided with a bundle of documents running to 234 pages.
2. At the outset of the hearing I discussed with the parties the issues I would be required to resolve. Mr Pugh for the claimant indicated that he relied on a breach of the implied term of trust and confidence. This was based on the respondent having pre-prepared a meeting and its outcome. In addition, the

claimant complained of the breach of an express contractual term set out in the respondent's disciplinary policy arguing that the respondent had failed to give five days' notice to the claimant for a meeting.

### **The Facts**

3. The claimant was employed by the respondent from 9 August 2015 initially on a temporary contract as a work coach later this was changed and she was employed as both work coach and Disability Employment Advisor on a permanent basis. The claimant's role required that she delivered services to the public during office hours.
4. The claimant attended a meeting on 16 March 2018 with Miss Gwyn. The purpose of the meeting was to discuss with the claimant some complaints that had been drawn to Miss Gwyn's attention. The meeting was described as informal, but the claimant felt that it appeared formal. The claimant indicates that this meeting and the way it was dealt with is the reason for her resignation. In evidence she described the formality as follows: that Miss Gwyn had a script at the meeting; that the claimant's comments at the meeting were not recorded and that the claimant's right to reply was not acknowledged.
5. Miss Gwyn had information brought to her attention about the claimant that caused her concern. She spoke to 3 individuals to gain an understanding of their assertions which involved the claimant making negative comments about the organisation and contradicting other managers at events she had attended. She decided to hold a meeting with the claimant to discuss the matters raised. To prepare for the meeting, Miss Gwyn wrote out the issues she wished to discuss as a form of prompt sheet to ensure that she covered all the matters that had been raised. Miss Gwyn intended the meeting to be, effectively, a one to one where she raised issues with the claimant to advise the claimant on appropriate working practices. This meeting was not meant as an investigation or any other part of a disciplinary process.
6. The claimant was not given notice of the meeting or what it was to be about. The claimant was informed that this was to be an informal discussion at the outset of the meeting. Miss Gwyn accepted that at the meeting she did not record the claimant's comments. She also asked the claimant to sign the notes at the end of the meeting; the claimant did so. The claimant was told at the end of the meeting that there was no action to be taken and there would be no effect on her record.
7. The claimant told me that because of the prepared script and the fact that no notes were made she considered that Miss Gwyn considered her guilty of the matters in question, the claimant felt she was not listened to. I rejected the claimant's evidence on this interpretation. It appeared clear to me from the script itself and from the evidence of Miss Gwyn that she was drawing the complaints of others to the claimant's attention. There was no question of guilt or innocence in the approach. In my judgment this meeting was typical of the

informal meetings between a manager and a member of staff to discuss a matter that has been drawn to the manager's attention.

8. The respondent accepted that the disciplinary policy required the claimant to be given appropriate notice and information when the claimant was to be dealt with in the disciplinary process. The policy for informal meetings has no such requirements.
9. The claimant tendered her resignation by letter dated 21 May 2018 giving notice. The 16 of March was a Friday, the claimant did not work weekends she attended a course for work on the 19 and 20 March and was dealing with paperwork on the 21 March. The claimant then went sick and on 27 March 2018 handed in a sick note and her written reply to the issues raised at the meeting. She received an offer of employment sometime in May before she handed in the letter of resignation. The claimant had agreed to return to work on a phased basis prior to her resignation. The claimant commenced her new employment on 18 June 2018. The claimant did not raise a grievance about these issues during that period. The claimant's letter of resignation made reference, albeit obliquely, back to the March meeting and the claimant clearly resigned in response to that meeting.

### The Law

10. The law to be applied is Section 95 of the Employment Rights Act 1996 which provides so far as is relevant:

***Circumstances in which an employee is dismissed***

*(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . ., only if)—*

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*(c) 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.*

11. The approach to constructive dismissal is set out by Lord Denning in ***Western Excavating (ECC) Ltd v Sharp [1978] 1 All ER 713, [1978] QB 761, [1978] 2 WLR 344, CA*** in which he defined constructive dismissal in the following way:

*“If the 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. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once."*

12. The guidance given for deciding if there has been a breach of the implied term of trust and confidence is set out in **Malik v. Bank of Credit; Mahmud v. Bank of Credit**[1998] AC 20; [1997] 3 All ER 1; [1997] IRLR 462; [1997] 3 WLR 95; [1997] ICR 606 where Lord Steyn said that an employer shall not:

*". . . without reasonable and proper cause, conduct itself in a manner calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*

13. In **Buckland v Bournemouth University Higher Education Corporation** [2010] EWCA Civ 121 Sedley LJ indicated that tribunals of fact can take a reasonably robust approach to the question of affirmation: a wronged party, particularly if that party fails to make their position entirely clear at the outset, cannot ordinarily expect to continue with the contract for very long without losing the option of termination.

14. I am therefore required to decide whether the respondent's conduct in this case could objectively be said to be calculated, or in the alternative likely, to *seriously* damage confidence and trust between the claimant and the respondent. Thereafter I am required to examine whether the claimant resigned in response to that conduct. Additionally, I must consider whether the claimant has affirmed the contract after the breach by conducting herself in such a way as to demonstrate that she has not lost the option of termination.

### **Analysis**

15. The claimant complains of a substantial breach in holding and conducting the meeting on 16 March 2018. In my judgement, looked at objectively, that meeting could not be seen as anything other than an informal discussion; albeit raising specific issues. The claimant was told it was informal and was told that it would not affect her work record in any way. The fact that Miss Gwyn used a script cannot undermine the overt statement that the meeting was informal with no consequential elements to make it a formal meeting. The fact that the claimant saw it in that way subjectively cannot affect the objective analysis.

16. I ask myself, therefore, can there be a breach of the express term to apply the disciplinary policy processes. In my judgment there cannot; those processes do not apply to informal meetings. There was no breach of that express term.
17. I then approach the question of whether the respondent has, without good reason, conducted itself in such a manner as to undermine the trust and confidence between employer and employee. There was a good reason to hold a meeting and discuss these matters with the claimant. The type of meeting that was held with the claimant is typical of the kind of discussions that take place everyday in workplaces throughout the UK. A manager was made aware of alleged conduct which did not warrant formal action, the manager drew to the attention of the employee that the type of conduct alleged was not acceptable and no formal action or record followed. The obvious intention was, whether the claimant had behaved as alleged or not, that she would be aware of the perceptions of others and could avoid such perceptions in future. There was nothing to warrant the claimant's loss of trust and confidence in those circumstances. In my judgment there was no breach of the implied term. In those circumstances there was no dismissal the claimant resigned.
18. Although I do not strictly need to deal with the issue of affirmation as the matter has been raised and subject of argument I record my conclusions. The claimant clearly resigned in response to the way in which the meeting of 16 March 2019 was held and conducted. Her letter of resignation and her evidence on that point are, in my judgment, incontrovertible. I do not accept that the claimant affirmed the breach. It is clear that the matter rankled with her sufficiently for her to provide the respondent with her written response. In addition, she was absent for a significant period and was looking for employment during that period. I cannot say that in those circumstances the claimant affirmed the contract.

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Employment Judge Beard  
26 February 2019

Judgment sent to Parties on  
\_\_\_\_2 March 2019\_\_\_\_

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