



EMPLOYMENT TRIBUNALS

Claimant: Mr A Powers

Respondent: Woodpecker Inn (Estates) Ltd

Heard at: Manchester

On: 4 July 2018

Before: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Miss T A Ahari, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for constructive unfair dismissal fails and is dismissed.

REASONS

1. The Claim

The sole claim in this case is that the claimant was unfairly dismissed. This is a case of alleged unfair constructive dismissal.

2. The Issues

The issues in this case relate to the following:

2.1 As the claimant accepts that he resigned, that of itself is not an issue.

2.2 The question is why he resigned.

2.3 The claimant says other members of staff where he was working were bullied by Mr Thornton, the General Manager, and they left because of it.

- 2.4 The claimant also says that when his son, Reece, was dismissed in early 2017 he had to work very long hours as the respondent was short-staffed.
- 2.5 The claimant says that the respondent was particularly short-staffed in January 2018 which, amongst other things, led to the claimant's resignation.

3. The Law

- 3.1 The Tribunal has to have regard to the following provision of the Employment Rights Act 1996 ("the Act") in coming to its decision, namely section 95(1)(c) of the Act, which provides that:

"An employee is dismissed by his employer if...(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."

- 3.2 Obviously the Tribunal has to have regard to the other unfair dismissal provisions in the Act should they become relevant.
- 3.3 The essence of section 95(1)(c) of the Act is that the employer's conduct must amount to a repudiatory breach or a breach going to the root of the employee's contract.
- 3.4 It can be one serious breach or a series of breaches, the final one of which being the last straw.

4. The Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1 The respondent runs an Italian restaurant in Preston.
- 4.2 The claimant was employed as Head Chef from 20 May 2013 to 1 February 2018.
- 4.3 Philip Thompson, who gave evidence for the respondent, became General Manager of the restaurant on 1 January 2016.
- 4.4 Although the claimant and Mr Thompson knew each other before, they had not worked closely together until 1 January 2016.
- 4.5 In early 2016 the claimant noticed that Mr Thompson had a certain management style which he likened to bullying, although the claimant was never personally bullied by Mr Thompson.
- 4.6 The claimant when he gave his evidence gave a number of examples of incidents which occurred to other members of staff, which did have the effect of humiliating them and did affect staff turnover, but the Tribunal finds that in none of these cases, as a matter of fact, did the claimant become so involved in those incidents that the respondent's conduct

affected him and his contractual position. In some cases he was a witness but in others he just became aware of these things through a third party.

- 4.7 The one exception to this was the sacking of the claimant's son, Reece, in early 2017. It was not so much the circumstances of Reece's dismissal that caused the problem, but more the resultant heavy workload on the claimant. Neither at that time nor at any other time during the relationship did the respondent feel it appropriate to invite the claimant to raise a grievance about the respondent's conduct, nor indeed did the claimant raise a grievance.
- 4.8 Apart from what I have described as the Reece incident and the way the claimant felt Mr Thompson handled staff, there seemed to be little that exercised the claimant until 31 January 2018, when in the claimant's assessment things were very busy in the restaurant and the claimant asked Mr Thompson for the assistance of a kitchen porter, as they could not manage in the kitchen with the staff they had (the kitchen porter incident).
- 4.9 Mr Thompson turned the claimant's request for a kitchen porter down for budgetary business reasons and the claimant was unhappy about the manner in which it was done.
- 4.10 When the claimant reported for work the next day Mr Thornton's wife, Amanda, was on duty. During the course of preparations unfortunately the claimant cut his finger. At some time he raised the issue of the kitchen porter with Amanda but she was unreceptive.
- 4.11 The claimant was clearly injured and decided to go but strangely instead of leaving his personal belongings at the restaurant he took them with him.
- 4.12 Mr Thompson saw the claimant in the car park and asked the claimant to come back inside. The claimant said that he was leaving and he was never coming back again. Despite Mr Thompson's protestations the claimant made it clear he did not want to engage and he walked away.
- 4.13 In fact the claimant went home and Mr Thompson telephoned soon afterwards and the claimant said to him during the course of this telephone conversation "I'm done. That's it". The claimant accepts that he resigned.

5. Determination of the Issues

After listening to the factual and legal submissions by and on behalf of the respective parties the Tribunal found as follows:

- 5.1 The question is: were there circumstances in which the claimant was entitled to terminate his contract by reason of the conduct of the respondent?

- 5.2 There may well have been something in the way in which the claimant was left unassisted after Reece was dismissed, but there was a long lapse of time between early 2017 and the date of the claimant's resignation for one to have any connection with the other.
- 5.3 If what had occurred in between (and before) had been continuing episodes of protest because of the respondent's conduct then the Reece incident might have been preserved.
- 5.4 Although there were incidents in between the Reece incident and the date of resignation none, in the view of the Tribunal, amount to events which pass the constructive dismissal test relating to the respondent's conduct.
- 5.5 So the Reece incident collapses and the incidents in between (and before) are insufficiently significant, so we are just left with the kitchen porter incident.
- 5.6 Can that alone tip the balance? The Tribunal says no, because rightly or wrongly the respondent had a business decision to make on 31 January 2018 as to whether to expend monies on a kitchen porter. It made it and alone that does not, in the view of the Tribunal, amount to a repudiatory breach of the claimant's contract.
- 5.7 Having regard to the evidence it is not for the Tribunal to speculate as to why the claimant gave in his notice, there not being sufficient to amount to constructive dismissal, and his claim is therefore dismissed.

Employment Judge Shulman

10 July 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 August 2018

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