Case Number: **1301138/2018**

EMPLOYMENT TRIBUNALS

Claimant		Respondent
Ms V. Grammatikopulo	-v-	**(1) Minster Distribution Ltd** **(2) Thompson & Parkes Ltd**

FINAL MERITS HEARING

Heard at: **Centre City Tower, Birmingham** On: **4, 5 October and 10 & 11 (Judgment & Remedy)**
December 2018

Before: **Employment Judge Perry** (sitting alone)

Appearances
For the Claimant: **Miss E Williamson (counsel)**
For the Respondents: **Mr E Beever (counsel)**

REASONS

(i) *Oral reasons were given at the conclusion of the hearing.*

(ii) *Both parties have subsequently sought written reasons.*

(iii) *Given judgments with reasons are now published on the Employment Tribunals' decisions website during the hearing I canvassed with both representatives if they wished to make submissions with regard to seeking a restricted reporting order pursuant to rule 50 of the Employment Tribunal Rules 2013 or otherwise in the event written reasons were sought. Neither did so.*

The background and issues

1 This is a claim for unfair dismissal, holiday pay, wages and breach of contract (as originally drawn) that arises out of the sudden death on the 26 October 2017 of Ms. Grammatikopulo's life partner Mr. Kenneth (Ken) Morris who was also the Managing Director of both Respondents.

2 To place the issues in context requires some of the background to be relayed. That background also needs to be set in the context of the ranker that followed Mr. Morris' sudden demise, between his family and Ms. Grammatikopulo and her family. That, that was so, was probably unsurprising given that Ms. Grammatikopulo told me that she had never spoken to Mr. Morris's wife in the 20 years Mr. Morris and Ms. Grammatikopulo lived together. However, the extent of the ranker including the alleged arrest of Ms. Grammatikopulo and her son was possibly not foreseeable.

3 It is not disputed that Ms. Grammatikopulo was employed by both Respondents, the first Minster Distribution Ltd (Minster) from the 1 June 2015 on a salary of £14,000.00 pa and Thompson & Parkes Ltd (T&P), the second Respondent, from 17 January 2005 on a salary of £16,001.00 pa. The employment contracts were in the bundle respectively [74] dated 10 June 2015 and [72] dated 1 October 2015.

4 The work (if any) that she did for either/both was disputed.

5 It was not in dispute that Ms. Grammatikopulo was abroad when Mr. Morris was taken ill and that she was unable to see him before he died. Nor is it positively disputed that she was upset at her treatment by the Morris family.

6 It transpired that a Facebook message was sent purportedly from her, but actually by her son, Mr. Baravets, on her behalf, on 6 November [175]. That stated that she wished to quit her job but sought that she be allowed to keep her mobile number and also seeking financial assistance. Other documents suggested that message was sent on 8 November.

7 As a result, it appears that a meeting was arranged between her and Mr. Baldwin, a shareholder and director of Minster and a close friend of Mr. Morris.

8 Whilst it is common ground Ms. Grammatikopulo initially refused (or at least was reluctant) to meet Mr. Baldwin as arranged), she eventually agreed to do so and on 23 November 2017 they went to a local Hotel (the Gainsborough Hotel) where they spoke about Mr. Morris and their respective relationships with and shared feelings (of loss) towards him. They also discussed, during what was agreed to be a meeting lasting 3 hours, an agreement, the terms of which were that Ms. Grammatikopulo would resign from both Respondents. There are issues about the nature of those discussions, whether that was forced or otherwise or whether it resulted from the Facebook message earlier sent by her son. I will return to those matters in due course.

9 The terms of the agreement they reached were set out in a letter she signed [183]. For the sake of clarity and consistency, I will refer to it here as the Agreement. It provided that she would be paid £10,000.00 plus potentially another £1,000.00 (depending on how one reads the agreement) upon her forgoing the right to bring claims against Minster and T&P (see §§ 17 and 18 of the ET3's).

10 Ms. Grammatikopulo seeks to argue that the Agreement was obtained by deceit although not in the strict criminal sense but via a deception perpetrated upon her. Again, I will return to that. She also brings a claim for unfair dismissal, wages and breach of contract. A holiday pay claim is longer pursued.

11 I raised with the parties two issues at the outset. Firstly, that the provision of the Agreement purporting to preclude further claims was potentially void pursuant to Section 203 Employment Rights Act 1996 (the Act) and secondly in relation to the unfair dismissal complaint, if Section 111A of the Act was engaged. I sought to drill down into what the factual disputes were that needed to be determined to identify if a voir dire was required. I will relay below the effect of that (38 to 40) and what was agreed by counsel as to the matters I need to decide in a moment (16).

12 I also indicated that it appeared to me that on the basis of the existing authorities the breach of the contract complaint would need to be pursued in the County Court. Ms Williamson at one point indicated she may wish to pursue an argument that the Tribunal had jurisdiction but conceded that such a claim had not been pleaded to and thus an application to amend would need to be made. If so, it appeared likely, based on what I heard that any application would be no doubt met with an application from the Respondents to amend their responses also.

13 I asked Ms Williamson to consider the position with her client over an adjournment, I granted so she could take instructions and having done so she told me she was not instructed to pursue that argument.

14 Before I relay the issues to be determined as the case proceeded, various points were agreed namely

14.1 the date of termination of Ms. Grammatikopulo's employment, 23 November 2017

14.2 that Mr. Baldwin had authority to act on behalf of both Respondents in relation to the Agreement,

14.3 Ms. Grammatikopulo's wages claims were limited to the period 1-23 November i.e. she had been paid for the month of October 2017, and

14.4 as I have said already that the holiday pay claim was not pursued.

15 As to the remaining claims;

15.1 as to unfair dismissal the Respondent argues the potentially fair reasons of redundancy or in the alternative some other substantial reason (SOSR);

15.2 as to the complaints for notice and wages and it was agreed that both would be addressed as part of remedy, that I would address separate to liability.

16 As to the issues I identified at (11) counsel for both parties agreed that based on the factual disputes and the discussion had at the outset the effect of which I set out below (38 to 40) a way forward was agreed,

16.1 both parties agreed that I could determine the whole claim and a voir dire was not required. I will relay why that is so once I have set out the factual issues in issue.

16.2 it was accepted the settlement clause in the Agreement was void pursuant to s.203 of the Act,

16.3 in the absence of an application for amendment, and no such application was made, the claim to enforce the agreement needed to be pursued elsewhere,

16.4 in the absence of Ms. Grammatikopulo not knowing what she was signing or that she had been deceived, it was also agreed that Ms. Grammatikopulo's resignation stood,

16.5 before I can determine if Ms. Grammatikopulo knew what she was signing or that she had been deceived I need to decide if there were pre-termination negotiations within s.111A of the Act ("a protected conversation")

16.6 if so that evidence is not admissible unless if s.111A(4) applies

the following matters were agreed as flowing from those conclusions:-

16.7 if there was a protected conversation and s.111A(4) does not apply then evidence of the protected conversation on 23 November 2017 will be inadmissible and it was agreed Ms. Grammatikopulo will find it difficult to succeed because it follows from (16.4) that she resigned, she will not be able to rely upon the contents of the protected conversation to suggest that she did not know what she was signing or had been deceived,

16.8 if the meeting on 23 November 2017 was not a protected conversation or if it was and s.111A(4) applies, only then will the question if Ms. Grammatikopulo knew what she was signing or deceived, fall to be considered.

16.9 If she can show she was deceived and/or did not know what she was signing, she will succeed in the unfair dismissal complaint; if not, she loses her unfair dismissal complaint.

16.10 If she succeeds in relation to her unfair dismissal claim, I will also need to determine liability and to address ***Polkey***. Contribution was not argued.

17 Ms. Grammatikopulo's date of birth is 8 March 1957.

18 Early conciliation was undertaken between the 11 January 2018 and the 11 February 2018 against both Respondents. Early conciliation was commenced in time. The claim was presented on the 8 March 2018. Accordingly, there is no dispute the claim was presented in time (within one month of the end of early conciliation).

19 Given the agreed matters above no jurisdictional issues arose.

The evidence

20 I had before me a 332-page bundle. I heard from Ms. Grammatikopulo, her son, Mr. Baravets, (there was no objection from the Respondent to an additional statement from Mr. Baravets being admitted), Mr. Baldwin and Ms. Bunn, who was one of the back-office staff and who worked for both respondents.

21 All the witnesses adopted their witness statements and Ms. Grammatikopulo and Mr. Baravets gave evidence via a Russian interpreter.

The Law

22 Section 111A(1) of the Act provides

> *"(1) Evidence of pre-termination negotiations is inadmissible in any proceedings on a complaint under section 111. This is subject to subsections (3) to (5).*
>
> *…*
>
> *(4) In relation to anything said or done which in the tribunal's opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just."*

23 The *Acas Code of Practice on Settlement Agreements* (the Code) gives a number of examples of improper behaviour:-

> *"18 …*
>
> *(e) Putting undue pressure on a party. For instance:*
>
> *(i) Not giving the reasonable time for consideration set out in paragraph 12 of this Code; …"*

24 Paragraph 12 of the Code states:-

> *"Parties should be given a reasonable period of time to consider the proposed settlement agreement. What constitutes a reasonable period of time will depend on the circumstances of the case. As a general rule, a minimum period of 10 calendar days should be allowed to consider the proposed formal written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise."*

25 As to dismissal by enforced resignation or resignation induced by deception, call them both what you will, essentially same principles apply. The effect of the latter is that the resignation will be ineffective, since there is no genuine consent to the termination on the part of the employee. The IDS Handbook Contracts of Employment [12.15] gives two examples, *Greens Motors (Bridport) Ltd v Makin*, unreported 16 April 1986, CA and *Caledonian Mining Co Ltd v Bassett [1987] ICR 425, EAT* in which the EAT said this at 432/33:-

> *"The industrial tribunal have said that if the employees were inveigled into leaving the employers' employ that was dismissal. That accords absolutely with the views expressed by Sir John Donaldson M.R. [in Martin v Glynwed Distribution Ltd] namely, "Who really terminated the contract of employment?" In the present case it was clearly the employers who caused the employees to resign. The fact that the employees gave notice when they resigned is in this case an irrelevant factor. The reality of the matter is that it was the employers who terminated the contract by inveigling the employees to resign in the circumstances to which we have already referred."* [1]

26 As to (un)ambiguous words of dismissal one only needs to go to *CF Capital Plc v Willoughby [2011] IRLR* 985 CA where Rimer LJ affirmed the ordinary common law

principle that once given, unambiguous words or written notice of resignation or dismissal cannot be withdrawn unilaterally [2].

27 Similarly, once an employer has breached trust and confidence the employer may not unilaterally repent and withdraw its actions, thus leaving it up to the employee whether or not still to leave and claim constructive dismissal [3].

28 Rimer LJ went on to acknowledge that there were exceptions to those principles, but:-

> *"[18] …they are limited and tribunals should not be astute to find exceptions. The fundamental question for a tribunal will be whether, in the special circumstances, the person to whom the words were addressed was entitled to assume that the decision which they expressed was a conscious rational decision; or whether there were circumstances that ought to indicate to their addressee that they were not meant, or should not be taken, at face value. In recognising the existence of such exceptions, said the EAT:*
>
> > ***'39. Without doubt the main practical problem which the law has sought to address in these cases has been the problem of words spoken in anger in the heat of the moment. In ordinary human experience we generally take people to mean what they say; but we often make allowances for words spoken in anger, recognising that they may soon be retracted and may reflect no more than a momentary, flawed intention on the part of the speaker. The law caters for this eventuality; but the law will not serve the wider interests of justice unless employers and employees are usually taken to mean what they say.' "***

29 Rimer LJ at [36] went on to refer to what Wood J in *Kwik-Fit (GB) Ltd v Lineham [1992] IRLR 156 EAT* explained was the 'special circumstances' exception reciting from *Lineham* as follows*:*

> *"31. Let us first look at the problem from the approach of sound management. As we have said, the industrial members take the view that the way in which this industrial Tribunal have expressed themselves puts too high a burden on employers. If words of resignation are unambiguous then prima facie an employer is entitled to treat them as such, but in the field of employment, personalities constitute an important consideration. Words may be spoken or actions expressed in temper or in the heat of the moment or under extreme pressure ("being jostled into a decision") and indeed the intellectual make-up of an employee may be relevant (see Barclay [1983] IRLR 313). These we refer to as "special circumstances". Where "special circumstances" arise it may be unreasonable for an employer to assume a resignation and to accept it forthwith. A reasonable period of time should be allowed to lapse and if circumstances arise during that period which put the employer on notice that further enquiry is desirable to see whether the resignation was really intended and can properly be assumed, then such enquiry is ignored at the employer's risk. He runs the risk that ultimately evidence may be forthcoming which indicates that that in the "special circumstances" the intention to resign was not the correct interpretation when the facts are judged objectively.*
>
> *32. How then is that approach to be reconciled in law? This is not a purely commercial context. In the sphere of industrial relations these special circumstances may arise due to those conflicts of personalities or individual characteristics. A resignation by an employee is a repudiation of the contract of employment, a fundamental breach. It should be accepted by the employer within a reasonable time (see Western Excavating (ECC) Ltd v. Sharp [1978] IRLR 27 CA, per Lord Denning at p. 29, 15; see also London Transport Executive v. Clarke [1981] IRLR 166). In many cases the acceptance will be by inference. Thus where words or actions are prima facie unambiguous, an employer is entitled to accept the repudiation at its face value at once, unless these special circumstances exist, in which case he should allow a reasonable time to elapse during which facts may arise which cast doubt upon that prima facie interpretation of the unambiguous words or action. If he does not investigate these facts, a Tribunal may hold him disentitled to assume that the words or actions did amount to a resignation,*

although – to paraphrase the words of May LJ – Tribunals should not be astute so to find.

33. One then asks, what is the reasonable period of time? It may be very short – Martin [1983] IRLR 49. It may be over a weekend – Barclay [1983] IRLR 313. The test is objective and one of reasonableness. It is only likely to be relatively short, a day or two, and it will almost certainly be the conduct of the employee which becomes relevant, but not necessarily so."

30 Where an employer argues that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, this is the so called *"Polkey"* reduction [4]. In such cases it is the task of the Tribunal is to assess, using its common sense, experience and sense of justice how long the employee would have been employed but for the dismissal.

31 Thus, the assessment is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer *would* have done so? The Tribunal's role is not to answer the question what it would have done if it were the employer or a hypothetical fair employer? It is assessing the chances of what the actual employer would have done, on the assumption that the employer would this time have acted fairly though it did not do so beforehand [5].

32 The appellate courts have repeatedly referred to the distinction drawn by Lord Bridge in *Polkey;* the Tribunal is not called upon to decide the question on the balance of probabilities but instead to reduce compensation by a percentage representing the chance of losing employment. It is a hypothetical enquiry that may have to be undertaken, owing more to assessment and judgment than it does to hard fact [6].

33 A degree of uncertainty is an inevitable feature of this exercise and the Tribunal must recognise there are limits to the extent to which it can confidently predict what might have been. It is acknowledged by the appellate courts that there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal no sensible prediction based on that evidence can properly be made.

34 The mere fact that an element of speculation is involved however is not a reason for refusing to have regard to the evidence. The tribunal must however take into account any evidence on which it considers it can properly rely and from which it could in principle conclude that the employment may have come to an end when it did, or alternatively would not have continued indefinitely. It may also be that the evidence available to the Tribunal is so riddled with uncertainty and so unreliable that no sensible prediction can properly be made. Whether that is so is a matter of impression and judgment for the Tribunal but a finding the employment would have continued indefinitely should be reached only where the evidence that it might have been terminated earlier is so scant that it can effectively be ignored [7].

35 The tribunal is entitled to take into account evidence of misconduct which came to light after the dismissal [8] but it is for the employer to bring forward relevant evidence. The Tribunal must however have regard to any material and reliable evidence which might assist when making that assessment, including any evidence from the employee [9].

My findings & conclusions

36 At the core of this claim is the question did Ms. Grammatikopulo seek that she be dismissed, fired or a payment be made to her on terms. Her financial straits or not aside?

37 The following questions arise:-

37.1 what was the purpose of the meeting with Mr. Baldwin on the 23 November 2017 at the Gainsborough Hotel? Was it a pre-termination negotiation or had the Respondent decided to dismiss her and solicited her resignation (albeit on terms) as merely a means of disguising the actuality?

37.2 If the discussion that day was a pre-termination negotiation, then s.111A potentially is engaged. If not, then I must ignore the contents of that discussion.

37.3 If so, I need to determine if s.111A(4) applies (see (16) above).

38 Fundamentally, because the accounts of the two people present on the 23 November were so at odds, the representatives agreed this case turned on whose version of that discussion I believe.

39 Mr. Baldwin states he explained the content of the agreement to Ms. Grammatikopulo and that she understood and agreed to it; whereas Ms. Grammatikopulo states that she did not and was deceived into signing it. Thus, their accounts also impact on the deception issue. If I accept Mr Baldwin's account, the conversation will be protected him, having discussed a settlement with her and her knowing what was being discussed. If I prefer Ms. Grammatikopulo's account, the conversation will not be protected and/or she was deceived did not know what she was signing.

40 Furthermore, given the issues as identified in the absence of the conversation being protected, or her being deceived and/or not knowing what she was signing, Ms. Grammatikopulo's resignation will stand and in the absence of being able to rely on the contents of the protected conversation she would not be able to argue she was constructively and unfairly dismissed and her claim will fail. As I say above those matters being so the representatives agreed that having formed a view on those issues the need for a voir dire was circumvented.

Whose account of the meeting on the 23 November do I believe?

41 I remind myself of the principles of *R v Lucas [1981] 1 QB 720, in particular at 74G and F/H, and R v Middleton [2000] TLR 293* (whilst they are cases from the criminal sphere the points still apply) :-

> *"… [A] conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B".*

Nor does the fact that a witness' account in relation to one matter is not accepted by the court or tribunal mean that witness is lying :-

> *"… witnesses can believe that their evidence contains a correct account of relevant events, but be mistaken because, for example, they misinterpreted the relevant events at the time or because they have over time convinced themselves of the account they now give".*

(See also A Local Authority v K & Ors *[2005] EWHC 144 (Fam) at [28]* and as yet further support what was said in *Lucas* and *Middleton* relating to ***"convincing themselves of the account they now give"*** *and see also the comments of Leggatt LJ in* Blue v Ashley *(Rev 1) [2017] EWHC 1928 (Comm) at [65 following]*).

Mr. Baldwin

42 I was told Mr. Baldwin gave the instruction to the respondents' solicitors who prepared both forms of response in form ET3. Both responses assert that the Agreement was ***drafted at*** the meeting at the Gainsborough Hotel on the 23 November 2017 [21, §16] and [34, §17]. That was at odds with his witness statement [DB/10].

43 In addition, he also failed to relay pertinent matters in his witness statement he told me about orally.

43.1 He accepted Ms. Grammatikopulo had no glasses and yet he continued to pursue completion of the settlement with Ms. Grammatikopulo,

43.2 He relayed new information in relation to a tax agreement between him and Mr. Morris in relation to their respective partners being paid a portion of their salaries from 2015 onwards, and

44 Mrs Morris had received legal advice in relation to the settlement agreement (although see (84) below).

45 I consider that neither Ms. Grammatikopulo nor her son were credible or consistent witnesses and Notwithstanding what I say above, in relation to ***R v Middleton*** and ***R v Lucas*** and the inconsistencies at (42 & 43) aside I prefer Mr. Baldwin's version of events to theirs. I will now explain why.

Mr. Baravets

46 The text from Mr. Baravets on the night of Sunday 26 November 2017 at 6.40pm was the first evidence that we have that there had been a change of heart on Ms. Grammatikopulo's part in relation to the Agreement.

47 Yet Mr. Baravets told me that Ms. Grammatikopulo had shown him the Agreement on the 23 November. That is at odds with her oral account. Thus, there is an inconsistency between them. In their witness statements (hers and his second witness statement) they both say it was the same day.

48 Yet there are also inconsistencies between their accounts about the text and the email chain. In one of the emails (25 November 19:26) Ms. Grammatikopulo relays her thanks to Mr. Baldwin. Given that postdates the meeting on the 23 November it supports the view there was a subsequent change of heart.

49 When those matters were put to Mr. Baravets, namely that there had been no initial mention that his Mother had been deceived and that the text suggests only a later change of heart, he suggested that the reason was that was done was to do so tactfully. That does not adequately address the later change in stance from the content of those emails in my judgment.

50 Further, both Mr. Baravets and Ms. Grammatikopulo both said that they had given their full account to their Solicitors. They confirmed at the outset they had read their statements but then orally expanded upon it. However, Mr. Baravets also not only provided an additional statement as the trial started. He then went on to elaborate on that.

51 Mr. Baravets was asked what his Mother's reason was when she decided she could not work anymore. Initially he could not tell me categorically but on being asked again stated that was because she was forced to because of criminal activities by the Morris family.

52 I find his story changed and those changes went beyond his explanation for his Mother not having sent the email thanking Mr. Baldwin if she had thought he had deceived her.

Ms. Grammatikopulo

53 Ms. Grammatikopulo stated that she had initially no reason to remain working at the respondents after Mr. Morris died, but had then concluded that she would need to stay for financial reasons.

54 She told me that she tried to contact Mrs Morris and had been unsuccessful. That as I say above was unsurprising given that they had not spoken in 20 years since Ms. Grammatikopulo had come to the UK.

55 She told me orally elaborated upon her statement

55.1 that Mr. Morris's son had come to their house when they were arranging the funeral and told them they could not see Mr Morris' body.

55.2 that the message to the bookkeeper, Dawn Cooper, had been sent after the police attended and she had been arrested, however there was no mention of that in her witness statement.

55.3 that she had been dismissed but also accepted that there were no words of dismissal used and the basis for that appeared to be that there was no money in her bank account, and she suspected that she would not get paid anymore. However, she did not seek to check out whether she had been paid or not.

56 I find having heard all the evidence that Ms. Grammatikopulo was annoyed at the way she had been treated by the Morris family following the death of Mr. Morris.

57 Mr. Baravets accepted he helped his Mother make her decisions. He told me there was a power of attorney in place and he wrote text and Facebook messages without needing to speak to her on the basis that she trusted him. If that is so, and I accept it was so, it is fanciful to suggest that he sent a Facebook message to the Respondent without her knowing about it, at the time or at least in the immediate aftermath. I find that she did know about it, even if it was not sent with her express consent. That is supported by what Mr. Baldwin told me she had told him as to her impecuniosity.

58 I find she had discussed the sending of that message with her son. I find that she had discussed with him her annoyance with the Morris family prior to that Facebook message being sent. I find based on what they both told me about their discussions taking place every day and it was simply fanciful to suggest that he was not aware of that and the subsequent texts and exchanges suggest that both Mr. Baravets and Ms. Grammatikopulo played a part in those exchanges. Putting it simply their involvement was interchangeable.

59 Whether that was on the 6 or the 8 November there was some dispute. Nothing significant turns on that.

60 I find that Ms. Grammatikopulo was looking for some form of settlement and she relayed to Mr. Baldwin the need for help both in financial terms, but also in terms of the need for assistance in relation to properties that she and Mr. Morris owned abroad. She makes no mention of these in any great detail, but the fact that he was aware of these issues, evidences a consistency between his account and what she accepts was the actuality.

61 Further, Ms. Grammatikopulo accepted Mr. Baldwin was being genuine in trying to help her with the funeral and seeing the body.

62 Her account of their meeting is also internally at odds. In her witness statement [VG/32] she states at no stage did Mr. Baldwin give her the Agreement or let her look at it, yet she accepted she had seen at the letter; she corrected the spelling. Notwithstanding the point that she may not have read the letter because she did not have her glasses with her (as Mr Baldwin accepts), I find it was an exaggeration to say, as she did, that Mr Baldwin did not give her the Agreement or let her look at it, indeed orally, she seemed to suggest that he was deliberately trying to take it/keep it away from her so she could not see it.

63 Further that is at odds with her basic account that she took a copy away with her and when she returned home, her son read it and told her of its effect [VG/37]. She sought to relay orally that it was a script, that was new, there was no mention of that in her witness statement.

64 Mr. Baldwin told me he read it to her in full line by line twice. At no point does Ms. Grammatikopulo say in terms that she did not understand the Agreement or that phrases "*quit and resign"* were distortions of what was said.

65 On her account, she was with Mr. Baldwin for several hours. There was no recantation from that when she got home. In contrast there were subsequent messages from her saying thank you to him.

66 Her account and that of her son differs as to when she showed him the documents. It was only on Sunday night, 3½ days later that the recantation came.

67 There were further matters relayed orally going beyond the statements that were not referred to elsewhere that I find to be embellishments,

67.1 Mr. Morris's son came to us "holding a hammer, one or two days after Ken died" that would have dated that incident to 28 or 29;

67.2 "the police tried to arrest us"; and

67.3 Ms. Grammatikopulo orally referred to work done for the respondents prior to 2005.

My conclusions on the witnesses

68 Whilst I accept that Mr. Baldwin in the instances that I have relayed about, expanded upon matters that were within his statement, Ms. Grammatikopulo and Mr. Baravets have not only done that, but their statements and their oral accounts have been both internally and externally inconsistent. Accordingly, and for those reasons alone, I prefer Mr. Baldwin's account.

69 Furthermore, Ms. Grammatikopulo's statement is inconsistent not only on peripheral matters, but on key matters and those inconsistencies spread across the depth and breadth of her account. For those reasons and whilst I remind myself that just because a person's evidence is preferred on one point, does not mean to say it should not be preferred on another, the depth and breadth of those inconsistencies and inaccuracies lead me to conclude that Mr. Baldwin's account across its breadth and depth should be accepted and preferred to those of Mr. Baravets and/or Ms. Grammatikopulo.

s.111A

70 Given my findings above, and for the reasons at (16 & 37) above I next turn to address the s. 111A point.

71 As I state above paragraph 18 of the Code refers to a reasonable time for consideration and paragraph 12 to a minimum period of 10 days as a general rule.

72 I find that Mr. Baldwin did not give Ms. Grammatikopulo a reasonable period pursuant to paragraph 12 to consider the terms of the settlement for the following reasons.

73 Ms. Grammatikopulo accepted Mr. Baldwin was genuine with respect to his concern for her not least as the partner of his friend. Having accepted his account overall and Ms. Grammatikopulo also having accepted he had genuine concerns about her financially, I find that on balance he was trying to ensure that a settlement was reached for her benefit expeditiously.

74 However, bearing in mind that Ms. Grammatikopulo was a lay person, did not have her glasses, her state of grief (the funeral had not taken place) and because he did not give her the opportunity to see a Lawyer and instead sought to get the settlement completed the same day, notwithstanding the genuine reason that was done, I conclude that that was not a reasonable time for consideration and that was improper behaviour that fell within s.111A(4).

75 For the reasons that I have just elaborated upon, I do not consider it just to exercise the discretion I have to make the pre-termination negotiations inadmissible pursuant to s.111A(4).

76 Accordingly, I find there was improper behaviour that fell within s.111A(4) such that s.111A is not engaged and as a result the pre-termination negotiation evidence is admissible.

Did Ms. Grammatikopulo know what she was signing and/or was she deceived?

77 Addressing the final issue I identified at (16 & 37) I find that Ms. Grammatikopulo (and her son on her behalf) were positively seeking a settlement from the Respondents to alleviate her financial problems and she had no desire to remain employed by the respondents. I find she assumed because there was no money in her bank account, she been dismissed. She accepted orally there was no basis for that assumption.

78 I find the meeting on the 23 November was a result of her soliciting a settlement, but also for Mr. Baldwin to provide assurances to her with respect to the other matters. I have already explained how and why I found that Mr. Baldwin was being genuine in trying to help her; not only to help her see Mr Morris's body, to help her attend the funeral but to support her in relation to the problems that she had with regard to her properties in Greece and Latvia.

79 She accepted she had asked him to intercede on her behalf. I find that is what he did.

80 She did not say when she had been in direct contact with him seeking he intercede. He told me there were a number of discussions between the 6 (or 8) August (as the case may be) and the 23 August. He told me he had been abroad during that time. Two discussions she accepted happened were an exchange of texts by SMS when he was abroad and also an exchange on the morning before the meeting on the 23 August.

81 I find also that Mr. Baldwin's account of the lead up to the meeting on the 23 August provides yet further support. The meeting would simply not have just come about in the way Ms. Grammatikopulo now suggests if she was seeking support which she accepts that she was.

82 The Respondent's evidence, albeit added orally by Mr. Baldwin, was that the respondents via Mrs Morris had sought advice in relation to a compromise agreement.

83 I have heard no evidence as to whether any thoughts had been entered into at that stage with regard to positively dismissing Ms. Grammatikopulo; the fact that a compromise agreement was contemplated is somewhat different. Ms. Grammatikopulo did not lead any evidence that words of dismissal were used prior to that meeting.

84 Whilst Mr. Baldwin might be criticised for not including any reference to those discussions with the respondents' lawyers in his witness statement, and he only gave that evidence orally at the hearing, those discussions were privileged and thus that provides an explanation for that omission.

85 The Respondents taking advice on a comprise agreement is somewhat different to seeking advice in relation to dismissing. One does not necessarily connote the other They can take place independently.

86 I find the terms of the Agreement were not provided in advance to Ms. Grammatikopulo but only at the meeting. I accept Ms. Williamson's point with regards to the effect of that on the ability of Ms. Grammatikopulo to negotiate.

87 I found above having preferred Mr. Baldwin's account, that there were some discussions between the him and Ms. Grammatikopulo before the meeting on the 23 November. He told me that the settlement figure that he came up with came from him and not from Ms. Grammatikopulo. The discussion on the day was as to whether she wished to accept the terms or not. I accept that he had explained those matters to her and that she agreed them. She previously canvassed resigning on terms. I find following the discussion on 23 August that is what she did.

88 Accordingly, based on the evidence before me, I find that Ms. Grammatikopulo resigned on the terms discussed. That she did not seek to recant from that straight away, but only several days later. That yet further supports that the terms of the Agreement were acceptable to her at the time, that is what she wanted to do and that she was not deceived.

Employment Judge Perry
11 March 2019

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[1] see also *Sheffield v Oxford Controls Co Ltd 1979 IRLR 133, EAT* and *Sandhu v Jan de Rijk Transport Ltd 2007 ICR 1137, CA* (approved in *Vairea v Reed Business Information Ltd [2016] UKEAT 0177/15)*
[2] *Harris & Russell Ltd v Slingsby [1973] IRLR 221*
[3] *Buckland v Bournemouth University [2010] IRLR 445, CA*
[4] *Polkey*
[5] *Hill v Governing Body of Great Tey Primary School UKEAT 0237/12, [2013] IRLR 274* per Langstaff P
[6] *V. v Hertfordshire County Council UKEAT/0427/14 per Langstaff P at [1 & 21-25]*
[7] *Software 2000 Ltd v Andrews [2007] IRLR 568*
[8] Devis v Atkins *[1977] IRLR 314* at [39] HL
[9] *Software 2000 at [54]*