



EMPLOYMENT TRIBUNALS

Claimant
Mr G Fox

v

Respondent
Master Locksmiths Association

Heard at: Cambridge

On: 25 September 2018

Before: Employment Judge Ord

Appearances:

For the Claimant: In person

For the Respondent: Ms S Clarke, Counsel

JUDGMENT having been sent to the parties on 25 January 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The claimant was employed by the respondent as a Marketing Officer from 5 January 2015 until 22 September 2017. His employment ended by way of resignation dated 19 September 2017.
2. The claimant brings a claim of (constructive) unfair dismissal.
3. The issue for the tribunal to determine was whether the claimant had been dismissed. The respondent did not identify any potentially fair reason for dismissal.

The Law

4. Under section 94 of the Employment Rights Act 1996, every employee has the right not to be unfairly dismissed.
5. Under section 95(1)(c) an employee is dismissed if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct.
6. In Western Excavating (ECC) Ltd. v Sharpe [1978] ICR 221, the Court of Appeal ruled that when an employer's conduct gives rise to constructive dismissal it must involve a repudiatory breach of contract.

7. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' even if the last straw by itself does not amount to a breach of contract (Lewis v Motorworld Garages Ltd. [1986] ICR 157).
8. The last straw itself does not have to amount to unreasonable or blameworthy conduct, but must contribute to the breach of the implied term of trust and confidence. An entirely innocuous act by the employer cannot be a final straw even if it is genuinely but mistakenly interpreted by the employee as hurtful and destructive of trust and confidence in the employer (Omilaju v Waltham Forest London Borough Council [2005] ICR 481).

The Facts

Evidence was heard from the claimant and from Amanda Ann Fox on behalf of the respondent. Based on their evidence and the contents of documents submitted to the tribunal I have made the following findings of fact:

9. The claimant's employment began on 5 January 2015.
10. He has identified a number of incidents which he relied on as cumulatively amounting to a breach of the implied term of trust and confidence. He identifies an email he received, expressed as a written warning, as the 'final straw'.
11. Regrettably much of the claimant's evidence and the allegations which he made lack precision. He talks about a campaign of "*subtle bullying*" and identifies the following specific incidents.
12. The claimant complains about his appraisal in December 2016. The document recording that appraisal was prepared, as is clear from the contents, with input from the claimant. The claimant's appraisal meeting was held with Mr George and after he was sent a copy of his appraisal and asked for his comments. He did not reply until March 2017 with words to the effect that the company was not sufficiently appreciative of his hard work. Although the claimant says that the appraisal was "*presented*" to him with no input, that is clearly not the case.
13. The claimant says that a request for a Doctor's appointment was not acknowledged and declined. In fact, the claimant had asked for leave for an appointment on a day which was not convenient to the respondent due to other staff absences. His Manager sought advice, inadvertently copied to the claimant, as to whether she should ask the claimant to get an alternative appointment, especially as the claimant was often late for work. The appointment was not, however, "*blocked*" as the claimant suggested, nor was it declined.
14. The claimant alleged that others within the respondent's business were given a pay rise when he did not, his pay rise only being reinstated when his mother complained on his behalf. An email from the respondent to each member of staff, including the claimant, identified that the pay

increases and bonuses were all made at the same time. The claimant did not question this at the time but in fact this is nothing more than a misunderstanding on his part. He received his bonus and pay rise contemporaneously with others.

15. The claimant complained that his Line Manager had thrown papers at him. In fact, the claimant was told on three occasions not to leave papers on top of a filing cabinet. On each occasion he returned the papers to that very place contrary to clear instructions from his Line Manager. I do not find as a fact that the Line Manager threw papers at the claimant but expressed her frustration in circumstances in which it was understandable to do so, given that the claimant - on his own case - willfully disobeyed her clear instruction on more than one occasion.
16. The claimant says that the Managing Director of the business Mr George, was "*testing*" a drill very close to his head. When he was asked to demonstrate or indicate how this had happened he could not do so. After his mother took up the cudgels on his behalf she asked to meet Mr George to discuss the position and expressed her view that she hoped that the Police would not need to be called. This however, was in August 2017, fully six months after the incident which had occurred in February of that year.
17. In any event, the claimant does not establish to my satisfaction that what was being done on the day was in any way provocative or contributed to any breach of contract. When he was asked to demonstrate how Mr. George was behaving and where the drill was in relation to his own head he could not do so.
18. The claimant complained that the Managing Director challenged him in the company car park because he was late. He expressed the view that Mr George had been waiting for him to catch him out.
19. The claimant however, admitted that he was persistently late. In addition, it is not inappropriate for the Managing Director of a small business to challenge a late employee. Thirdly, I accept Mr George's evidence that he had just challenged another late employee and was on his way across the car park at the time when he saw the claimant, also arriving late for work. None of that is anything other than fair and to challenge a late employee for their lateness is a wholly innocuous act by the respondent.
20. The claimant had raised a formal grievance in September 2016, which he then asked to be handled informally. He raised complaint about the conduct of the claimant's Line Manager. Mr George held a mediation meeting and the outcome was confirmed in writing to the claimant. He was asked to report any further issues to Mr George immediately and the claimant made no further report. His own evidence is that after that "*things returned to normal*".
21. The claimant was in receipt of an email on 15 August from Mr George which was said to be a "*final written warning..[as].. information given out has to be correct*". The claimant had made an error in referring to City and Guilds qualifications and / or accreditations to the potential detriment of a

member of the respondent organisation. Mr George asked the claimant to attend a meeting to discuss his concerns after a suggestion from the claimant that that Mr. George had falsified an email. The claimant did not attend the meeting despite it being rearranged.

22. On 19 August 2017, five weeks after the “*warning*” email the claimant resigned. He referred to the environment at the respondent as being “*intolerable*”. He had found a new role and tendered his resignation once he had secured that role. The respondent, as he was entitled to under his contract, placed the claimant on ‘Garden Leave’ during his period of notice.
23. In his letter, the claimant said that he had raised previous complaints which had been ignored. As a fact, each allegation which has been brought to my attention which the claimant says he raised was dealt with. His grievance was properly dealt with and he did not raise any further complaint or grievance before August 2017.
24. There was some suggestion that the claimant was moving to his “*dream job*” when leaving the respondent’s business. Certainly, he confirmed that he enjoyed his current role and he had waited until he had secured it before he resigned.

Conclusions

Applying the facts found to the relevant Law I have reached the following conclusions.

25. The claimant’s complaints against the respondent do not constitute a fundamental breach of contract. They are not well founded. He has, at the best, interpreted reasonable management instruction and behaviour as bullying.
26. The claimant has over stressed events in particular the incident with the drill. Whether he has done so deliberately I cannot say; but when asked to explain the detail of that event, he could not do so.
27. The claimant has also attributed to the respondent unreasonable conduct regarding issues where he was the architect of the problem. He placed papers in a position where he was told specifically not to put them, on his own admission, three times and was late for work regularly. He has interpreted admonishment for these actions as unreasonably conduct by the respondent when they were not.
28. The final straw on which the claimant seeks to rely was not a blameworthy act by the respondent. It drew to the claimant’s attention the need to ensure that information being sent out for and on behalf of members of the respondent’s Association was correct. I note that he does not say that the information that he sent out was correct.
29. In any event, the claimant worked without further incident or comment for five weeks after that email. If I had been satisfied that the respondent was in fundamental breach of the terms of its contract with the claimant, then I

would have found that the claimant, by working for five weeks, had affirmed the contract of employment and waived the breach.

30. Further, the reason for the claimant's resignation was that he had indeed found a job which he considered more suitable for his skills which he was more interested in pursuing. The fact that he subsequently engaged in email communication from a colleague within the respondent stating his clear enjoyment of this new job is indicative of the reason why the claimant left. He left because he found more congenial employment, and not because of any breach of contract by the respondent (none being found).
31. Accordingly, the claimant's employment ended by way of resignation. He was not entitled to resigned as a result of any conduct of the respondent. He was not dismissed and his claim therefore fails.

Employment Judge Ord

Date: 18 March 2019

Judgment sent to the parties on

21 March 2019

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For the Tribunal office