



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E Mapplethorpe

**Respondent:** Grimsby, Cleethorpes and District Citizens Advice Bureau

**Heard at:** Lincoln

**On:** 3 October 2018

Wednesday 5 and Thursday 6 December 2018

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

## Representation

**Claimant:** Mr Huntley – Mckenzie (friend)

**Respondent:** Ms Rees - Solicitor

**JUDGMENT** having been sent to the parties on 19 December 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## JUDGMENT

1. The Claim of constructive unfair dismissal succeeds. The Respondent is ordered to pay compensation to the Claimant as follows;

1.1 Basic award £3,211.67

1.2 Compensatory award £8,859.77

1.2 Total £12,071.44

2. The Recoupment Regulations apply.

A. Grand total of the monetary award £12,071.44

B. Prescribed element £2,217.38

C. Excess of A over B, £9,854.06

D. Prescribed period from 14 February 2018 until 2 July 2018.

# REASONS

## Background to this Claim

1. The Claimant presented her claim to the Tribunal on 7 April 2018. She had been employed by the Respondent as a Training Lead and had started her employment on 4 August 2008. She resigned with effect from 14 February 2018.
2. She claimed constructive unfair dismissal only. She says that she suffers from anxiety and depression because of domestic abuse and the Respondent was aware of this. She complained that she had been tidying up in the kitchen on 2 February 2018 when she was shouted at by the Chief Executive, Tony Gaskins.
3. On 7 February 2018 she approached Duncan Rossiter, the Deputy Chief Executive informally asking him to speak to Tony Gaskins.
4. On 9 February 2018 Tony Gaskins demanded that she should withdraw the allegation and then invited the Claimant to attend a disciplinary hearing which she described as being “out of the blue” about her MASLAR report that she had submitted some 28 days prior.
5. The Claimant describes this as retaliatory action in breach of company policies which caused her to feel humiliated and on 14 February 2018 she resigned in response.
6. The issue for me was to decide whether the behaviour of the Chief Executive amounted to a fundamental breach of the implied term of mutual trust and confidence. If it did I have to ask whether she resigned because of that or because the Respondent made proper use of the disciplinary procedure. I must decide whether she accepted the breach or affirmed the contract. In this case no fair reason is put forward for dismissing her and so if I find that there was a fundamental breach of her contract which she resigned because of and she had not delayed too long then she succeeds with her claim.

## Evidence

7. I heard evidence from the following: -
  - The Claimant
  - Chris Cawley, a colleague
  - Taya Bates, a former colleague
  - Tony Gaskins, Chief Executive Officer
  - Duncan Rossiter, Deputy Chief Executive Officer
8. Where there was a conflict of evidence I preferred the evidence of the Claimant and her witnesses. The evidence that the Claimant gave was consistent with the documents and other evidence and was credible and corroborated by her witnesses.
9. The Respondent’s witnesses were not consistent or credible.

10. An example of this being the evidence relating to the lateness in filing the MASLAR report. In evidence Mr Gaskins referred to a date of completion of the report of the end of June 2017 and then said that there were numerous failures by the Claimant after that date. He said that they had to push back the date and there had been a further failure by the Claimant liver by an absolute final date of 31 December 2017.

11. I was satisfied that this was not a true reflection of the position and that he sought to rely on this to excuse his behaviour. In fact, the date for filing the MASLAR report was originally at the end of October 2017. No one had completed the report by that date and it was put back to the end of December 2017. The Claimant in fact presented her report on 12 January 2018 just a few days late. I also found that he had unjustly tried to criticise the claimant saying that

“Throughout the course of my management of the claimant she often displayed three usual reasons as to why she had not completed a piece of work, or not completed the task, they would be “I don’t know”, “I didn’t have time”, or “no one told me”.

12. Mr Gaskins says that they discussed disciplinary action after an e-mail of 2 January 2018. But there is no evidence to support any such event. In fact, when Mr Gaskins met with the Claimant on 11 January 2018 he simply told her that he wanted her to hand in the report as soon as possible with no mention of any disciplinary action. I am satisfied that there was no consideration of disciplinary action until after the Claimant had approached Duncan Rossiter on 7 February to complain about Mr Gaskins’ behaviour.

13. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

### **The Facts**

14. The Claimant commenced her employment with the Respondent on 4 August 2008. She was employed as a Trainee Lead which is a supervisory role and she was one of five supervisors. The Claimant worked three and a half days per week.

15. The Respondent is the Citizens Advice Bureau for the Grimsby and Cleethorpes area. They have policies in place which I will refer to which were:-

- Disciplinary procedure (pages 37-42)
- Dignity at work policy (pages 43-51)
- Grievance policy (pages 52-5)

16. Tony Gaskins is the Chief Executive Officer of the organisation and Duncan Rossiter is the Deputy Chief Executive Officer.

17. I am satisfied that Mr Gaskins was aware that in the past the Claimant had been subject to domestic abuse and as a result had suffered from anxiety and depression.

18. Mr Gaskins introduced competency meetings in autumn 2017. These meetings with the Claimant took place on:-

- 19 October 2017 (pages 206-9)
- 23 November 2017 (pages 229-36)
- 11 January 2018 (pages 167-8)

19. The Citizens Advice Bureau held a contract to deliver debt advice, funded by the Money Advice Service (“MAS”). To meet this contract the Bureau had to maintain terms and conditions stipulated by MAS.

20. On 5 April 2017, a supervisor Ms Thomson e-mailed another supervisor Ms Davidson a template setting out the MAS requirements to demonstrate competency. This was e-mailed to the rest of the team including the Claimant. In the attachment to the e-mail it said:

“This lists the units you have to do – essentially all of them except the first!”

21. The first item in the section for supervisors and the task, the Claimant was told they didn’t need to do was the Money Advice Supervisor Learning Record (“MASLAR”). This was a workbook of 11 questions to be answered in relation to supporting 2 different debt advisers. At that time no deadlines were discussed.

22. The supervisors were instructed by e-mail from management to complete on-line GGDA exams in order to comply with the MAS requirements. The deadline to complete the exams was 30 June 2017.

23. Eventually the Claimant took the exam on 12 May 2017. The exam was marked by MAS by return and the Claimant printed off her certificate and e-mailed it to Mr Gaskins the same day which was prior to the deadline given of 30 June 2017 (page 185).

24. There was then a deadline of 31 October 2017 to file the report. None of the 4 supervisors had managed to complete this report by then and during the Claimant’s support and supervision meeting on 19 October 2017 she was told the deadline was extended for all supervisors to 31 December 2017 (page 207).

25. By the deadline date, two full time supervisors had completed their reports but 3-part time members of the supervisory team including the Claimant still had not.

26. On 11 January 2018 the Claimant had a supervision and support meeting that was being combined with her annual appraisal. It was with Mr Gaskins and Mr Rossiter. She was told that due to time constraints they would concentrate on areas of concern and that if something wasn’t mentioned she could assume that there was no problem with it. Mr Rossiter identified that she had missed the deadline to complete the MASLAR and she was asked to complete and submit it as soon as possible. There was no mention made of any potential disciplinary action arising from its late completion (page 167-8).

27. The following day the Claimant completed the MASLAR and e-mailed it to Mr Rossiter. She did not receive any response and thought that there was no issue further in respect of this matter.

28. On Friday 2 February 2018 the Claimant went to the staff kitchen at approximately 10:30 am to make tea. Whilst there she tidied the kitchen. She

was only there for a few minutes. She had been at work since approximately 8:30 am.

29. She returned to her desk and approximately 30 minutes later Tony Gaskins approached her. He stood over her. She looked up at him and said, "is everything alright?" and he replied "no". She went on to say, "it isn't me is it?" and he shouted at her saying "I am not paying you £12.50 an hour to clean the kitchen". She tried to reply and he shouted over her "I don't care" and left the room. The Claimant felt humiliated and intimidated by Mr Gaskins.

30. I am satisfied that Ms Mapplethorpe was extremely upset by the behaviour of Mr Gaskins. This is supported by the witness statement of Taya Bates who describes her observation of the Claimant at lunchtime.

31. The Claimant worked on 6 February 2018 and then on the following day 7 February 2018 she approached Mr Rossiter. She wanted to have an informal discussion which was in-line with the dignity at work policy. Notes were made by Mr Rossiter and are at pages 243-6. Ms Mapplethorpe explained that she did not want to raise a formal grievance but she wanted Mr Gaskins to understand how she felt.

32. Later that day Mr Rossiter spoke to Mr Gaskins who said that he did not recognise her account of what happened. He stated that he did not shout at Ms Mapplethorpe.

33. The following day 8 February 2018 Mr Rossiter spoke to the Claimant and told her that he had spoken to Mr Gaskins. He showed her Mr Gaskins response on his PC. It was titled "Conversation with CEO". The document is at page 244. He told her that Mr Gaskins had denied shouting at her and he advised her that she had an option to make a formal grievance. She didn't think that she would be able to prove that Mr Gaskins had shouted at her and so she felt there was no point in raising a formal grievance even if she had the courage to do so. Mr Rossiter said that as neither Mr Gaskins or Miss Mapplethorpe could prove the other wrong and if she wasn't going to raise a formal grievance it was the end of the matter and his involvement in it She said she would think about it (page 244).

34. On 9 February 2018 Mr Gaskins approached Mr Rossiter. Mr Gaskins did not want there to be any written record on the HR file saying to do so would deny him the opportunity to respond and defend himself against the allegations that were being made against him. He handed a statement which is at 245-6 and said that he wanted this read direct to the Claimant. Mr Gaskins wanted the Claimant to withdraw her allegation and said he would "not tolerate such a statement on any HR record... unless it is true and can be backed with evidence". He said that he was considering raising a grievance himself.

35. Whilst the Claimant was considering matters later that day she was called into Mr Gaskins' office. He gave her a letter inviting her to attend a disciplinary hearing (pages 249-54). The allegation was that she had submitted work on 12 January 2018 which was late. In the letter he said she had been told on 3 occasions what was required. As described above that allegation was untrue. I am satisfied that the allegation came "out of the blue 28 days after she had submitted the work and the day after she had received a response to her grievance".

36. Ms Mapplethorpe considered her position and on 14 February 2018 resigned by letter (page 256-7). She said Mr Gaskins' behaviour towards her amounted to a fundamental breach of the term of mutual trust and confidence. Although she was asked to reconsider her resignation she declined.

### **The Law**

37. The claim of unfair dismissal is made under Section 94 of the Employment Rights Act 1996 ("ERA"). Section 95 of the ERA details the circumstances in which an employee is dismissed. It provides:

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

38. The leading case in respect of this matter is still that of **Western Excavating (ECC) Limited v Sharp** [1978] ICR 221. That found that an employer's conduct must involve a repudiatory breach of contract. In order to claim constructive dismissal the employee must establish that:-

- There was a fundamental breach of contract on the part of the employer
- The employer's breach caused the employee to resign
- The employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal

39. I have also considered the case of **Malik v Bank of Credit** [1997] ICR 606.

### **My Conclusions**

40. I am satisfied that: -

40.1 That Tony Gaskins did shout at the Claimant on 2 February 2018.

40.2 That he stood over her at her desk whilst doing so.

40.3 That he bullied and intimidated her.

40.4 He did this knowing that she would be vulnerable and be intimidated.

40.5 It was quite reasonable for the Claimant in accordance with her rights under the dignity at work policy to raise an informal grievance.

40.6 That she was distressed by these events at the time.

40.7 That Mr Gaskins' response was not appropriate.

40.8 He demanded that she withdraw the allegations and accused her of lying.

40.9 There was then a further act of bullying and intimidation when he used the words "I will not tolerate".

40.10 His behaviour was in breach of the Respondent's own dignity at work policy.

40.11 He then further compounded his behaviour with making the Claimant subject to an unjustified disciplinary action. This amounted to further bullying and intimidation of the Claimant.

40.12 He made unfounded allegations in that letter about the filing of the MASLAR report.

41. This behaviour amounted to a fundamental breach of the term of mutual trust and confidence. The Claimant was entitled to resign and did so. She resigned because of that behaviour and she did not affirm the contract. The claim of constructive unfair dismissal therefore succeeds.

### **Remedy**

42. The Claimant seeks compensation only. At the date of the dismissal the Claimant was 45 years old and had 9 full years of service. She was paid £291.97 per week gross and her net pay was £259.86.

43. The Claimant was unemployed between 14 February 2018 and 2 July 2018. Since 2 July she has been working and her net loss since 2 July has been £100.79 per week.

44. The Claimant is therefore entitled to: -

A basic award (11 x £291.97)	-	<b>£3,211.67</b>
------------------------------	---	------------------

### **Compensatory Award**

Loss to obtaining new employment between 14 February 2018 and 2 July 2018 (20 x £259.86) equals	-	£5,197.20
Loss to hearing from 2 July (22 x £100.79)	-	£2,217.38
Future loss - 13 x £100.79	-	£1,310.27
Credit is given for an overpayment of wages of	-£365.08	
Total compensatory award	-	<b>£8,859.77</b>

The recoupment period is between 14 February 2018 and 2 July 2018.

Employment Judge Hutchinson

Date 26 April 2019

REASONS SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE