



EMPLOYMENT TRIBUNALS

Claimant: Mr A Harrison

Respondent: Prudhoe & District United Services Club Limited

Heard at: North Shields

On: 19 June, 2018

Before: Employment Judge Nicol (sitting alone)

Representation

Claimant: Ms C Millns, Counsel

Respondent: Mr N Price, Counsel

RESERVED JUDGMENT

After hearing the parties, it is the judgment of the Tribunal that the claimant was not dismissed by the respondent for the purposes of the Employment Rights Act, 1996, and his complaint that he was unfairly dismissed is not well founded and is dismissed

REASONS

1 This is a complaint by Alan Harrison, the claimant, against Prudhoe & District United Services Club Limited, the respondent, arising from his employment by the respondent as a club steward. The claimant alleges that, although he resigned, he was unfairly dismissed by the respondent. The claimant's employment with the respondent commenced on 25 September, 1998, and the effective date of termination was 4 October, 2017, when the claimant had been in continuous employment for nine complete years.

2 The respondent denies that the claimant was dismissed. The first issue for the Tribunal to decide is whether the claimant was dismissed for the purposes of the Employment Rights Act, 1996. Without prejudice to its denial that the claimant was dismissed, the respondent accepts that, if the Tribunal finds that the claimant was dismissed, the dismissal was unfair. In that event, the Tribunal must decide whether there are factors that might affect the remedy to which the claimant could be entitled and, finally, the appropriate remedy, if any.

3 The Tribunal heard evidence from the claimant and from Nicholas Hepple, club secretary, and Elaine Suddes, chair of the respondent's committee, on behalf of the respondent. The witnesses gave their evidence in chief by submitting written statements that were read by the Tribunal at the start of the hearing and, subject to any necessary corrections, confirmed on oath or affirmation at the start of each witness's oral evidence and, as permitted by the Tribunal, answering supplemental questions. All witnesses were cross-examined. The Tribunal had before it a bundle of documents produced by the respondent marked 'Exhibit R1'. Both parties made oral closing submissions. From the evidence that it heard and the documents that it has seen, the Tribunal finds the following facts.

4 The respondent is a members club, which is managed through a committee, and the claimant was employed as the club steward. As such, he was the respondent's senior employee and was responsible for the operation of the bar and its stock. However, disciplinary matters were the responsibility of the respondent's committee. At around his sixty-fifth birthday, the claimant indicated that he was expecting to retire in the next two years. This could have been around his sixty-seventh birthday but there was not any commitment to this on either side.

5 Glenn McCann was the next in line to the claimant and was described as 'the number two man'. He would take charge when the claimant was not present. He had been introduced to the respondent by the claimant and was appointed in April, 2014. The claimant's wife also worked for the respondent.

6 Mr McCann had been married to the claimant's wife's sister. His former wife was now married to his brother. Whilst employed by the respondent, Mr McCann remarried someone else.

7 Mrs Suddes had been chair of the club's committee since November, 2012, having joined the committee the previous month. Mr Hepple joined the respondent's committee in April, 2014. He became assistant secretary in June, 2015, and secretary on 30 June, 2015. His main functions are dealing with the accounts and banking and taking minutes of committee meetings. He dealt with the claimant on a daily basis and found him difficult to deal with.

8 From documentation in the bundle, it is clear that there was friction between the claimant, his wife and Mr McCann. There is a history of the claimant and Mr McCann making complaints to the respondent's committee about each other. There was not any evidence to suggest that the claimant was scared of or intimidated by Mr McCann but there was evidence to suggest that the claimant abused Mr McCann.

9 The claimant complained that Mr McCann did not support him with regard to taking holidays and would ask for time off when it was inconvenient or the claimant had already booked holidays. The only incident of this that appears to have been reported was when the claimant changed his dates to clash with Mr McCann. Mr McCann could not change his dates without suffering a penalty. The overlap was quite small and eventually the claimant agreed to provide the cover needed.

10 When Mr McCann remarried, he invited several employees of the respondent, which could have made it difficult to provide adequate cover. In fact this was not a problem because employees attended the event in shifts and cover was maintained.

11 At a committee meeting held on 30 August, 2016, all three were issued with verbal warnings in relation to personal conflicts between them. None of them appealed against this. The warnings appear to have had little effect.

12 The respondent has a grievance procedure, which can involve both informal and formal procedures, the latter being potentially a three stage process, if the grievance cannot be resolved at an early stage. Especially in relation to conduct matters, the procedure does allow for early escalation of a grievance to stage three but does not have any provision for an appeal if it is not then resolved. By that stage, the respondent's committee will have been involved and there will not be anyone left in management who has not been involved in the process.

13 When Mr McCann started work for the club, there was a practice of allowing a particular member to have drinks on credit. This practice was continued by Mr McCann. However, the claimant brought the situation to the attention of the committee and it was agreed that any practice for giving credit should be terminated and a notice was displayed to that effect.

14 In his statement, the claimant states that in October, 2016, he 'discovered that McCann was providing credit to club members which was not permitted'. However, he only gives one example. The claimant says that he found a list behind the bar that suggested that credit for drinks had been given to a named member, the same one as had previously been allowed credit. The claimant was concerned because it was his responsibility to make good any stock losses. When challenged, Mr McCann stated that he had paid the amount due and that it was his prerogative to give credit. A check of the till record did not appear to show that the drinks had been paid for. The claimant reported the matter to Mrs Suddes. Although there were various references to stocktaking checks, there was not any evidence before the Tribunal to suggest that the respondent had suffered any unexplained losses.

15 Shortly after this, the claimant found an unsealed envelope behind the bar addressed to 'Glenn'. For reasons that were not made entirely clear, the claimant chose to open the envelope and found a note stating 'Don't be so fucking nosey, you weak sad old man, with your slag of a wife (ask Joyce)'. The claimant thought that this note was directed to him and that the reference to 'Joyce' was to someone known to the claimant's wife. The claimant found the note to be offensive.

16 The claimant reported the matter to Mrs Suddes and it was agreed that the note would be returned to where it was found to see what happened next. It would have been obvious that the envelope had been opened. Over a period of six weeks, a further five notes appeared, which the claimant copied and passed copies to Mrs Suddes. The claimant also gave Mrs Suddes a note known to have been written by Mr McCann to show that it was in the same handwriting. The claimant considered all of the notes to be directed to him and to be offensive.

17 Knowing that the claimant had found the note about the drinks provided to the member, it is quite likely that Mr McCann expected the claimant to investigate the envelope and left a message intended to offend the claimant. Mr McCann then expected the claimant to find the further notes and left them to wind the claimant up, in which he succeeded. This would all seem consistent with the poor state of relations between the claimant and Mr McCann.

18 The claimant claims that Mr McCann was asked to appear before the committee when he was asked about the notes. The claimant says that Mr McCann denied writing the notes and said that they were sent to him. Mrs Suddes contested this and said that Mr McCann had not denied writing the notes but stated that they were addressed to him. Subsequently, Mr McCann provided an explanation that, as a method of anger management, he wrote notes to himself when feeling angry expressing his feelings, which he then put in an envelope. When he was under control again, he opened the envelope and read the contents.

19 In a letter dated 19 December, 2016, the respondent agreed to the claimant reducing his working hours from sixty to forty per week. The claimant was issued with a revised contract of employment which he refused to sign because he disputed the holiday arrangements. However, it was clear that the claimant wished to continue his employment with the respondent and affirmed his old contract, subject to the alteration in hours.

20 The evidence given by Mrs Suddes was, at times, difficult to follow and contradictory. However, the Tribunal was satisfied that Mrs Suddes did speak to the claimant about the progress of his complaint. However, there may have been a misunderstanding over what Mr McCann had said. His comment that the notes were sent to him could be construed as implying that he was not the author. This would explain why in January, 2017, the claimant presented samples of Mr McCann's handwriting to the committee and asked that they be examined by a handwriting expert to confirm that the notes were written by Mr McCann. The committee was concerned about this and Mrs Suddes contacted ACAS to find out if there was a problem because the envelope had been opened by someone to whom it was not addressed. She was referred on to the Information Commissioner's Office where she was told that it could be an offence under data protection legislation. The committee therefore considered that it was not appropriate to consult a handwriting expert as the fact that the envelope had been opened could lead to problems for the respondent and the claimant.

21 The claimant says that he was informed that no further action was to be taken as the envelope was addressed to 'Glenn'. The claimant says that he was stressed and depressed because he considered that Mr McCann's explanation had been accepted without taking steps to check its accuracy.

22 Despite this, because he says that he did not get any feedback, on 31 January, 2017, the claimant wrote to the respondent asking what the current situation was regarding the second man. The respondent responded in a letter dated 3 February, 2017, stating that there was a change in its HR consultant but the respondent was now consulting ACAS.

23 In a letter dated 14 April, 2017, the claimant raised 'a formal grievance against Mr McCann'. The letter concentrates on allegations about Mr McCann's conduct and the failure of the committee to take what the claimant considered to be appropriate action.

24 As well as his complaint about the notes, the claimant referred to other incidents where he alleged that Mr McCann was at fault. One related to kegs being put out for return to the brewery whilst they still contained about two gallons of beer, in total. This

would have resulted in a stock loss for which the claimant was responsible. Only the claimant and Mr McCann were responsible for putting kegs out for collection.

25 Another incident arose after two forged were found in the respondent's till. At the request of the Police, the claimant and Mr Hepple checked internal CCTV footage to see if the person who paid with them could be identified. The claimant insisted on checking more footage than requested by the Police. As a result, he saw what he assumed was Mr McCann giving credit to the member referred to above. The claimant also queried Mr McCann offering to replace the forged notes with genuine ones even though Mr McCann was responsible for ensuring that the till balanced at the relevant time and for making up any shortfall.

26 Mr Hepple had offered to speak to Mr McCann about the apparent giving of credit but the claimant said he would deal with the matter himself. However, the claimant did not follow this up until he raised it in his grievance.

27 The committee met with Mr McCann and the issue of allowing credit was raised. Mr McCann explained that the member in question had assisted him by lending him some tools. By way of thanks, Mr McCann bought him drinks. Rather than pay for the drinks as they were consumed, he kept a tally and paid for them at the end of the session. The committee accepted this explanation, in the absence of any contradictory evidence.

28 With regard to the kegs, this was the only occasion when such an occurrence had been noted. Mr Hepple expressed the view that it was a matter that should have been dealt with directly by the claimant, which was also the view of the committee.

29 The claimant's grievance was rejected by the respondent. The rejection was set out in two letters. In the first dated 25 April, 2017, the claimant was informed of the reason why his complaint about the notes was not being further considered. The second letter was dated 9 May, 2017, after the committee had seen Mr McCann. It was confirmed that the committee accepted that Mr McCann was paying for the drinks in question. It was also confirmed that the committee considered that the claimant should have dealt with the issue of the kegs with Mr McCann at the time.

30 The claimant believed that the committee did not support him sufficiently and took Mr McCann's part too often. The claimant says that as a result he became anxious and depressed. He says that he could not take time off work because of the position that it would leave the respondent in. No evidence was produced to support this.

31 The claimant was not offered the option of appealing against the outcome of his grievance. However, there is no evidence to suggest that he made any complaint about the outcome or attempted to have the matter re-opened.

32 The claimant says that he lost confidence in the committee and his working relationship with committee members deteriorated. He further says that the stress and depression affected him physically so that he felt that he had to resign because he could not see any prospect of things changing and he was worried about the state of his health. However, the claimant did not mention his concerns to anyone but said that he tried to deal with it himself.

33 By a letter dated 14 July, 2017, the claimant resigned his position with notice 'to honour [his] contract'. He gave twelve weeks' notice of his intention to leave because he believed that he was required to do so by his contract of employment and he wanted to ensure that he did things properly. He now accepts that this was not correct and that he was actually obliged to give less notice. His contract, in both the original and later versions, is clear on the point and it is difficult to see why it was misunderstood. The only reason that he gave for leaving was 'to retire'. He did not make any reference to any problems that he may have encountered. The respondent's committee accepted the claimant's decision to leave.

34 The resignation letter was handed to Mr Hepple. A few days later, Mr Hepple asked the claimant whether he wanted to retire then and the claimant confirmed that he did but did give any indication that he was going because of his health or the situation at the club.

35 During his employment with the respondent, the claimant was provided with accommodation by the respondent. On the termination of his employment, he was required to vacate the accommodation, which he did. There was not any evidence to suggest that this caused the claimant any problems.

36 After the claimant resigned, his wife applied for his job but was unsuccessful as Mr McCann was appointed to the post.

37 The full contentions of the parties were set out in their closing submissions. The claimant contended that he was constructively dismissed by the respondent and that he was entitled to treat his contract of employment as having been terminated because of fundamental breaches of that contract, particularly in respect of the failure to address his grievances. The respondent refuted these contentions and denied that it had dismissed the claimant. The respondent also contended that it had complied with the appropriate procedures and that the claimant had affirmed his contract of employment before resigning.

38 Section 95 of the Employment Rights Act, 1996, ('the Act') states that

(1) For the purposes of this Part an employee is dismissed if (and, subject to subsection (2) and section 96, only if):

(a) the contract under which he is employed is terminated by the employer (whether with or without notice)

...or

(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.'

39 In a case where the claimant may have been constructively dismissed, the Tribunal must consider whether the actions of the respondent amounted to a fundamental breach of contract such as would entitle the employee to treat his/her contract of employment as at an end.

40 If the claimant was dismissed, the respondent accepted that the dismissal would have been unfair.

41 The Tribunal finds that the claimant and Mr McCann did not enjoy a good working relationship. Although the claimant was the senior person, he seems not to have wanted to exert any authority over Mr McCann but took his complaints straight to the committee. The committee's processing of these complaints was not good, especially with regard to communication. However, there was not any evidence to suggest that when it did something the committee did not give proper consideration to the matters before it.

42 Throughout, the claimant affirmed his contract of employment both by requesting and accepting a change of terms and in respect of giving notice. It can be argued that the giving of notice was merely procedural and not a true affirmation of the contract since this was the means by which it was ended. However, the claimant tried so hard to comply with his contractual obligations that he gave more notice than he was contractually obliged to give because he misread the contract. On his account, the claimant had been suffering as a result of the respondent's actions for several months before giving notice and he then prolonged his suffering for a further nearly three months.

43 The claimant had decided that he was approaching retirement but did not have a fixed date for his retirement. His resignation letter confirms his desire to retire and does not make any mention of problems with his employment. Even when asked if he wanted to withdraw his resignation, he did not suggest that the reason he wanted to go was anything other than retirement.

44 When the respondent notified the claimant that his grievance was rejected, good practice would have been to offer him the right to an appeal. However, the claimant did not give any indication that he was dissatisfied with the outcome or attempt to raise the rejection with any of the club's officers or its committee, although he was used to raising matters that way. Similarly, although the claimant says that his mental and physical health were suffering as a result of his treatment, the claimant did not raise this. There was not any medical evidence to suggest that the claimant had sought medical advice on his situation.

45 After the claimant resigned, the claimant's wife applied for his job but was unsuccessful as Mr McCann was appointed to the post. This raises the question of whether the claimant had been seeking to undermine Mr McCann to give his wife a better chance. However, there was not any evidence concerning this.

46 What is clear is that there was bad feeling between the claimant and Mr McCann and that the claimant was seeking to show Mr McCann in a bad light to the committee, which he failed to do.

47 Having found the note showing the drink tally for the member, it would seem that Mr McCann retaliated by writing the notes which the claimant found. The claimant raised this with the committee which then found itself in a difficult position. It was advised that it was at risk under data protection legislation because the envelope had been opened by someone to whom it was not addressed. Although the claimant was legally represented, the assertion about opening the envelope was not challenged. The

claimant had gone looking for trouble and found it and then kept on looking for more. He could have challenged Mr McCann at an early stage but chose not to do so and instead took the matter to the committee. When the committee found that it could do nothing the claimant raised a grievance and cited further allegations against Mr McCann. The further allegations were investigated by the committee, which found against the claimant. On the basis of the evidence before it, the committee reached conclusions that it was entitled to reach. The claimant contends that his health was suffering but there is not any evidence to support this or to indicate that the committee was aware of the situation.

48 Had the claimant resigned at an earlier stage, the situation might have been different. He allowed the committee to reach conclusions on his grievance and then delayed taking any action for several months. During those months, there was not any evidence of further matters on which the claimant could rely in support of his complaint.

49 The Tribunal therefore finds that there were not reasons, taken individually or in combination, to justify the claimant resigning and then to claim constructive dismissal.

50 With regard to the implied term of trust and confidence, as indicated above, the claimant gave the respondent the opportunity to remedy any breach in the way in which it handled the grievance. Although he was clearly not happy with the outcome, the claimant did not indicate this to the respondent. The Tribunal finds that the respondent was not in breach of the implied term when the claimant resigned or, if it had been at any stage through the way the matter was handled, that breach was remedied.

51 Accordingly, at the time when the claimant resigned, he was not entitled to consider that the respondent had acted in a manner which the claimant could treat as a repudiation of his contract of employment. The Tribunal therefore finds that the claimant was not dismissed by the respondent and that his complaint that he was unfairly dismissed should be dismissed.

Employment Judge Nicol

Date 13 July, 2018

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