



EMPLOYMENT TRIBUNALS

Claimant: Mr F Kearney

Respondent: Keolis Amey Metrolink Limited

Heard at: Manchester

On: 21, 22 and 23 May 2018

Before: Employment Judge Sherratt
Mrs J Pennie
Mr W Haydock

REPRESENTATION:

Claimant: In person

Respondent: Mr J Martin, Solicitor

JUDGMENT having been sent to the parties on 28 May 2019 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:

REASONS

1. The claimant brings complaints of constructive unfair dismissal, that he made public interest disclosures as a result of which he was subjected to various detriments and that it was the reason for his resignation. He also claims that he suffered detriment for being a member of a trade union. In the course of giving his evidence the claimant withdrew his trade union detriment claim and at the end of his summing up the claimant withdrew his claims relating to public interest disclosure, so those claims will be dismissed on withdrawal, leaving for the Tribunal's consideration the claim of constructive unfair dismissal.

2. The claimant gave evidence on his own behalf and called Dr Ian Haslam, a former colleague, to give evidence for him. For the respondent we heard evidence from Mr K McLaughlin, the claimant's team leader; from Mr Graham Lord-Jones who was the manager of the team leaders until promotion, from Mr Matthew Iddles who became the manager and from Ms Katie Huthwaite, an HR Business Partner.

3. There was a bundle of documents containing about 190 pages.

The Facts

4. The claimant was employed by the respondent as a Customer Services Representative, which seems to the Tribunal to involve a revenue protection role. The respondent operates the tram system in Manchester.

5. The claimant was employed from January 2000. He was at all relevant times in Team 10, one of the 12 or 13 teams dealing with revenue protection. The team had no leader for some time and Mr Kenny McLaughlin became the team leader from January 2017. He had previously worked alongside the claimant, there appearing to have been a good relationship between them with Mr McLaughlin at some stage giving the claimant lifts when he did not have transport to get him into work. However, once Mr McLaughlin had a position in authority over the claimant the relationship seems to have faltered.

6. The claimant has brought before the Tribunal a number of issues that caused him some concern.

7. On 11 March 2017 there was an early morning operation involving various teams of four CSRs getting on various trams to surprise commuters without tickets. The claimant was in the second team of four and due to get on Tram 2. The first team of four should have left the depot on Tram 1 but for some reason did not get on it and instead got on Tram 2. The claimant got on Tram 2 joining the first team of four already on it and without the other three members of his team who remained on the platform.

8. The claimant was subsequently spoken to by Kenny McLaughlin in the presence of Irene Shafto, another team leader. Mr McLaughlin asked him to write a report explaining why he was on Tram 2. The claimant arguably, from the respondent's perspective, should have boarded Tram 3 not on Tram 2. The claimant could say that he was instructed to get on Tram 2 and he did so but in so doing he either did not use his initiative on seeing what happened to the first team and wait for Tram 3 with his team colleagues or was being awkward.

9. The claimant complains that he was spoken to and asked to write reports about the paperwork filled in by him when dealing with passengers. We have seen in the hearing bundle copies of documents completed by the claimant which appear to have sections that were not fully completed and/or entries made where the respondent says they should not have been.

10. There was an issue concerning some time off for dental appointments. The claimant complains that in a meeting of his team the team leader said simply that the claimant was being allowed this time off but that no-one else would be allowed the time off in the future. Thereafter there was an email exchange where the team leader was wanting the claimant to provide proof of dental appointments and the claimant was saying that he could not provide that proof because he was ten miles away from the dentist. Notwithstanding this the team leader still required proof of the appointments. The upshot of it was the claimant did not go to his dental appointments.

11. The claimant later complained after the manager, Mr Lord-Jones, made a decision to move the claimant from Team 10 to Team 12, when it was apparent to him that relations between the claimant and his team leader were not proving satisfactory. We find that it did not involve a breach of contract for the claimant to be moved from one team to another. This team move would not have involved the claimant moving to a different depot but it may have inconvenienced him if shift times or holiday patterns were different.

12. The final incident that has come before this Tribunal relates to Easter 2018 when on Good Friday the claimant and a colleague went to get pizzas for the team's lunch. Having brought the pizzas back and eaten them the lunch break appeared to go on for around one hour 40 minutes when it should have been for 30 minutes. The claimant and his colleague were both questioned about it.

13. The claimant says that on 23 June 2017 he met with Mr Lord-Jones. Mr Lord-Jones does not remember that meeting but does not go as far as to deny that it took place. The claimant says that when he met with Mr Lord-Jones he explained his situation and that he felt he was being singled out by his team leader. That seems to concern the way in which the claimant filled out paperwork, and according to the claimant's note to himself that we have in the bundle it was the seventh time in recent weeks he had been asked to do reports on his paperwork whereas there had never been a problem before. That did not appear to result in any investigation. We know that on 2 October when Mr Lord-Jones indicated to the claimant that he should move teams that he was aware of an atmosphere between the claimant and his team leader, but that had not involved at that stage the claimant making any formal complaint.

14. On 6 October the claimant wrote to Mr Graham Lord-Jones raising his concerns over the matters concerning the dental appointments, and various text messages from his manager. He said that he objected strongly to the manner in which these things took place. He asked how was he supposed to get proof of appointments, he did not live that close to the dentist that he could just call in, and on Wednesday evening in front of all the team members that were in that evening it was made clear to him that those days had been granted without conditions attached. It was a simple request and a simply yes or no would have sufficed. Earlier in that document he said he had been "singled out in front of the whole team".

15. We then move forward to 13 October 2017 when the claimant raised a formal grievance to Steve Johnston, a manager presumably above Mr Lord-Jones, who has not come to the Tribunal. On 13 October 2017 the claimant wrote:

"I would like to raise a formal grievance. This is in regard to my proposed move from my current team. I am sorry that it has come to this, however after serious consideration I am left with no choice. The proposed move was without good cause or reason, it will cause myself unnecessary stress and hardship."

16. The grievance does not refer to the actions of the team leader. It refers to the actions of Mr Lord-Jones who made the decision to move the claimant.

17. There was a grievance meeting with Steve Johnston, Head of Revenue and Security, on 31 October 2017 and from Mr Lord-Jones's manuscript notes in the meeting the claimant is reported as saying:

"As I said, I feel Kenny has consistently looked for problems in my work and done this selectively."

Mr Johnston asked:

"Are you suggesting Kenny treats you differently?"

Answer:

"Yes he does and has done so consistently."

Later, the claimant says:

"I feel that I'm being harassed and victimised."

18. According to the note Mr Johnston says:

"Can't consider anything like that Frank, that's not what I'm addressing here."

19. In that meeting the claimant refers to the way in which he is treated by his manager, refers to harassment and victimisation and is told that that is not to be dealt with as part of that meeting.

20. Mr Johnston in his outcome letter told the claimant that he was still moving to a different team.

21. The claimant, on 15 November 2017, wrote to Ms Huthwaite, the HR Business Partner, wishing to appeal the grievance outcome decision of Steve Johnston. The claimant said in his letter:

"The meeting with Steve Johnston and his subsequent outcome letter which raised further concerns which I also raise in this appeal:

- (1) The grievance was not heard fairly and/or impartially;
- (2) Taking disciplinary action for performance related issues without going through the disciplinary process –
 - (i) No investigation was conducted;
 - (ii) No disciplinary invite letter sent out;
 - (iii) No right to trade union representation;
- (3) Failure to answer concerns I raised during the meeting around me feeling harassment and victimised;
- (4) Failure to answer the concern I raised about Kenny McLaughlin asking someone else to keep me behind at Old Trafford for 30 minutes."

22. The appeal hearing on 5 January 2018 was before Mr Dave Brennen, the respondent's Engineering Director. The outcome letter was sent on 30 January. Mr Brennen decided that the claimant would not be required to move to another team stating that he did not believe that the correct process had been followed and that any performance issues needed to be dealt with in an appropriate manner. He had investigated the "dental leave" issue and it was found that where more than 2 people were off at the same time it was protocol to ask for evidence.

23. The claimant having received the grievance appeal outcome letter did nothing for some time. There do not appear to be any further matters arising until the pizza incident at Easter 2018.

24. The claimant wrote to Mr Matt Iddles, the Customer Service Representatives' manager on 6 April 2018, saying:

"I'm writing to inform you that I wish to raise a formal grievance. This action is being considered with regards to the following circumstances detailed below."

It goes on to say,

"This feeling of being harassed and victimised in the workplace surrounds the actions and conduct of team leader, Kenny McLaughlin, towards myself. This has been going on for some time so I hope that this grievance can be heard at the earliest opportunity as this is causing me a great deal of stress and anxiety."

25. The claimant went off sick after that date and does not appear to have returned to work.

26. It is relevant here to refer to the respondent's individual grievance procedure which unusually forms part of the contract of employment of the respondent's employees. There is reference to a stage one grievance where:

"If an employee wishes to raise a matter of concern it will, in the first instance, be discussed with the employee's immediate supervisor/manager, who will then arrange a meeting within ten working days which will be attended by all relevant persons. The supervisor or manager will hear the grievance and give a decision within ten working days unless at the time of the hearing a different time period is agreed."

And the final stage:

"You refer in writing within ten working days to a director who will arrange a meeting within ten working days to be attended by all relevant persons. The director will give a decision within ten working days unless at the time of the hearing a different time period is mutually agreed. The director's decision shall be final."

27. It is apparent that the respondent did not comply with its own procedure in respect of the time taken to deal with the claimant's grievances but the claimant did not raise this as an issue with the respondent. Had it been raised in respect of the grievance process that ended in January 2018 it is likely that we would have found

that the claimant waived any breach of that procedure by continuing to work normally.

28. I have referred to the claimant going off sick at the time he raised his grievance. A grievance meeting was arranged for 30 May 2018 by Ms Huthwaite but she went on leave and her manager, Suzanne Basson, dealt with matters in her absence. She, on 30 May 2018, telephoned the claimant to say that the meeting had been called off as he was on sick leave with work related stress and they wanted him to attend an Occupational Health appointment. The company had been aware he was on long-term sick as he had been off for over four weeks since 7 April, and according to the claimant's documents when a Metrolink employee is off sick for more than four weeks it is common practice for them to be sent to Occupational Health.

29. There is in the bundle an email exchange between the claimant and Ms Basson in which she confirms that the claimant is being sent for an Occupational Health appointment and that the claimant accepts that the Occupational Health appointment will take place before the grievance is dealt with.

30. The claimant's evidence was to the effect that he really had little choice in doing this, but nonetheless he did agree to it and the grievance hearing that should have taken place on 30 May was cancelled.

31. The Occupational Health consultation occurred on 20 June 2018. The report that was produced by Occupational Health on 28 June confirmed that the claimant was fully fit to attend the grievance meeting and hoping to return to work when the situation was resolved.

32. A grievance meeting was arranged for 11 July 2018 after the Occupational Health report confirmed that the claimant was ready to attend a grievance meeting. The claimant attended the meeting with his trade union representative but it was terminated when the respondent would not allow the claimant to record it.

33. It became apparent to Ms Huthwaite at the meeting that the claimant had resigned in a letter to the respondent's managing director. The claimant's letter, received on 28 June, had not been brought to her attention

34. In his letter of resignation dated 26 June 2018 addressed to the managing director of the respondent company, rather than to the claimant's managers or to HR, the claimant wrote:

"It is with deep sadness and regret that I have to write this letter. I have been employed at Metrolink for over 18 years. However, after what has taken place with myself and senior staff I feel I have been left with no choice but to resign. From May 2017 I have been subjected to harassment from my team leader. When I made complaints to my manager, Mr Graham Lord-Jones, these were ignored and matters became worse for me. I was wrongly subjected to an attempted forced move to another team. I've also had my online cascade accessed where my annual leave requests were changed without my authority. Having raised a grievance against my move I had a meeting with director, David Brennen, which was recorded. I explained in that meeting all

my concerns. However since that meeting I have still been the victim of harassment by the same team leader. I do not believe that my concerns have been investigated in line with Metrolink policies and procedures and it is my belief that none of the company's management will investigate my claims, leaving me bitterly disappointed.

On a personal note although I am leaving the company bitterly disappointed at the actions of some of the staff I wish yourself and Keolis Amey Metrolink all the very best for the future."

35. The claimant resignation without notice on 26 June was because his concerns had not been investigated and believing that none of the respondent's management would investigate his claims. The claimant did not raise any allegation in respect of the delay in arranging the grievance meetings.

36. The claimant had agreed at the end of the May that his grievance hearing scheduled to take place on 29 May would be postponed to allow for an OH report and the claimant accepted that it was normal for the respondent to call for such reports where there were 4 weeks of absence. We know that the grievance hearing was to consider the claimant's 6 April grievance as to the way in which he was treated by his team leader.

37. Did the claimant resign in circumstances such that he could leave because of the employer's conduct? Had they treated him in such a way that they had breached the duty of mutual trust and confidence?

38. In our judgment the claimant did not leave in circumstances in which he was entitled to do so by reason of the employer's conduct. A grievance meeting had been arranged for 30 May at which the matters set out in the grievance would have been discussed. It was postponed by agreement and a further meeting was arranged. We therefore find that the claimant's stated belief on 26 June that none of the management would investigate his claims or concerns was not a reasonable belief and that the claimant resigned prematurely, shortly before the company was to have had the meeting with him at which his issues would have been considered.

Employment Judge Sherratt

21 June 2019

REASONS SENT TO THE PARTIES ON

28 June 2019

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