



# EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Robson**

Respondent: **NCC Group Security Services Limited**

HELD AT: Leeds

ON: 18 to 22 March, 25  
and 26 March 2019

BEFORE: Employment Judge Cox  
Lannaman

Ms B R Hodgkinson

Mr K

Representation:

Claimant: Mr Frew, counsel

Respondent: Mr Boyd, counsel

## REASONS

1. Mrs Robson presented a claim to the Tribunal against her former employer, NCC Group Security Services Limited (“the Company”), relating to the way in which she had been treated around the time of her pregnancy and maternity leave.
2. During the course of the Hearing Mrs Robson clarified and amended the allegations that she was making. It is an implied term in every contract of employment that an employer will not without reasonable and proper cause act in a way that is calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee (Malik v BCCI SA [1998] AC 20). Mrs Robson clarified that she was alleging that various of the Company’s acts, including but not limited to various acts of alleged maternity discrimination and victimisation, amounted to a breach of that implied term and that when she resigned in response to them she had been constructively dismissed. She alleged that her dismissal was both an act of discrimination contrary to the Equality Act 2010 and an unfair dismissal under Section 99 of the Employment Rights Act 1996 (ERA), because the principal reason for the Company’s conduct related to her pregnancy and/or her exercise of the right to maternity leave and/or her grievance about discrimination. Further, she claimed damages for breach of her contractual right to notice of termination.

3. During the course of the Hearing Mrs Robson withdrew an allegation of unauthorised deductions from wages, which was dismissed.
4. At the Hearing the Tribunal heard oral evidence from Mrs Robson herself. For the Company, it heard oral evidence from Mr John Mundell, UK Sales Director, Assurance Division; Mrs Jade Jagger, Human Resources Advisor; Mr Peter Farrell, Head of Sales for Managed Security Services and then Head of Sales for Partnership Accounts within the Assurance Division; and Mr Simon Reynolds, Sales Manager in the Client Development Team.
5. On the basis of that evidence and the documents to which the witnesses referred it, the Tribunal made the following findings on the allegations.

#### Background facts

6. The Company is part of NCC Group plc, which provides worldwide cyber security consulting and risk management services, helping its customers to improve the digital security of their computer networks and reduce the threat of cybercrime.
7. Mrs Robson worked as a Senior Account Manager, selling the Company's services to new and existing customers. At the time of her resignation from the Company she was paid a basic annual salary of over £74,000 and significant commission payments, giving her a total remuneration package, according to her Schedule of Loss, of over £130,000 a year. Before she went on maternity leave, her line manager was Mr Farrell.

#### Breach of trust and confidence before maternity leave

8. Mrs Robson's first set of allegations related to the Company's actions in the period from 16 January to 22 February 2018, on which date she went on maternity leave. These actions were alleged to amount to, or contribute towards, a breach of trust and confidence.
9. Mrs Robson alleged that Mr Farrell did not explain until 16 February 2018 who was to look after her accounts during her maternity leave or if it was her responsibility to decide who would look after her accounts. During the course of cross-examination, Mrs Robson accepted that it was in fact her responsibility to identify someone to look after her accounts while she was on maternity leave. The Tribunal was satisfied she was aware at the time that this was her responsibility. Initially, she identified her colleague Ms Gardner for the role and then, at Mr Farrell's suggestion, she approached Mr Adderley. The reason why Mr Farrell did not spell out to her that it was her responsibility to find someone to look after her accounts was because it was apparent to both Mrs Robson and Mr Farrell that it was. Mr Farrell's conduct did not amount to or contribute towards a breach of the implied term of mutual trust and confidence.
10. Mrs Robson alleged that Mr Farrell did not tell her what information she should give to customers about who was taking over her accounts or who their contact should be

during her maternity leave. On the evidence it heard, the Tribunal found that Mr Farrell did not give her that instruction because he did not consider it was his responsibility to do so. The Tribunal accepted that he had reasonable and proper cause for taking that position. As an employee on a remuneration package worth more than £130,000 a year, Mrs Robson could not reasonably expect her manager to have to spell out matters of this sort. She was able to give any customers with whom she was actively working when she began her maternity leave Mr Adderley's contact details and leave a message to that effect on her corporate email and 'phone accounts. Mr Farrell's conduct did not amount to or contribute towards a breach of trust and confidence.

11. Mrs Robson alleged that Mr Farrell did not inform her what would happen to the deals that she had worked on that were finalised, or "closed", during her maternity leave. The Tribunal accepted that Mr Farrell had reasonable and proper cause for not expressly spelling this out: he knew that Mrs Robson already had this information, because it was set out in the agreement eventually reached between herself and Mr Adderley on the terms on which he would look after her accounts during her absence. Mr Farrell's conduct did not amount to or contribute towards a breach of trust and confidence.
12. Mrs Robson alleged that Mr Farrell did not inform her how she would be contacted during her maternity leave regarding organisational changes and training. The Tribunal accepted that Mr Farrell did not inform Mrs Robson about this but that was because he had reasonable and proper cause not to tell her: he knew she would be receiving emails to her corporate email account about these issues and she had access to that account during her maternity leave. Mr Farrell's conduct did not amount to or contribute towards a breach of trust and confidence.
13. Mrs Robson alleged that the fact that Mr Farrell did not give his final authorisation for her maternity plan until 16 February 2018 amounted to a breach of trust and confidence. Mr Farrell began discussing Mr Robson's maternity arrangements with her in good time on 18 January 2018, at a point when he believed her maternity leave would not be beginning until the middle of March. It is true that he did not send Mrs Robson a final sign-off on her maternity arrangements until 16 February, which was only a few days before she went on maternity leave, but that was because of the delay caused by the need to find an alternative person to look after Mrs Robson's accounts when Ms Gardner would not accept the terms that Mrs Robson proposed. Mrs Robson was aware of the reason for the delay. In the circumstances, the Tribunal did not accept that Mr Farrell's conduct breached, or contributed towards a breach, of the implied term.

#### Breach of trust and confidence during maternity leave

14. Mrs Robson's next set of allegations related to the way Mr Farrell acted during her maternity leave, which she said amounted to, or contributed towards, a breach of trust and confidence.

15. Mrs Robson alleged that, in breach of an agreement he had made with Mrs Robson at their meeting on 18 January 2018, Mr Farrell failed to provide her with a monthly report on the projects she had worked on that were closing, the projects that had closed and when projects were due to be invoiced, so that she could make financial plans in relation to the income these would generate for her. In his evidence, Mr Farrell denied that any such agreement was reached at his meeting with Mrs Robson on 18 January. The Tribunal preferred his evidence to that of Mrs Robson on this point. Mrs Robson did not mention in her witness statement that these details had been agreed. Further, when clarifying her allegations during the Hearing, she initially said that the agreement had been made sometime between 12 and 16 February in a telephone call or at a meeting. Mr Farrell's evidence, on the other hand, was clear and unequivocal that he gave no such undertaking to provide these details. The Tribunal considered it implausible that Mr Farrell would have agreed to provide this level of detail, given that it would have been a very timeconsuming exercise to produce it. The Tribunal accepted that later, in July, Mrs Robson did ask Mr Farrell for detailed information, and at that point Mr Farrell provided it. The Tribunal did not accept that Mr Farrell was guilty of any conduct that breached, or contributed towards a breach, of the implied term.
16. Mrs Robson alleged that Mr Farrell failed to provide an agreed system of communication with her during her maternity leave. The Tribunal accepted that Mr Farrell did not expressly discuss with Mrs Robson how the Company would communicate with her while she was on maternity leave. There was, however, reasonable and proper cause for this, namely that Mr Farrell and Mrs Robson both knew that she could and would be communicated with via her corporate email account whilst she was away. Mr Farrell's conduct did not amount to, or contribute towards, a breach of trust and confidence.
17. During Mrs Robson's maternity leave the Company undertook a reorganisation that affected her role. Mrs Robson alleged that Mr Farrell's failure to inform her about her change of role or tell her that Mr Kemp had sent her an email on 29 May to advise her about this change amounted to a breach of the implied term. The Tribunal accepted that Mr Farrell had reasonable and proper cause for not alerting Mrs Robson to the email that had been sent to her corporate email account on 29 May; he knew that she had the opportunity to monitor and read all communications from the Company if she had wanted to do so by accessing her Company email account. Mr Farrell's conduct did not amount to, or contribute towards, a breach of trust and confidence.
18. Mrs Robson alleged that either Mr Farrell or Mr Reynolds had breached the implied term by not giving her details of a course on High Value Selling that had taken place during her maternity leave, and not asking her whether she was available to attend it. The Tribunal accepted Mr Farrell's evidence, which was supported by that of Mr Reynolds, that line managers had no part in the decision-making on who should go on this course. Individuals were initially selected by more senior management in the Company, in conjunction with the Company's in-house Training Academy, based on who currently had deals in the pipeline that they could be assisted to close with the

benefit of training. That did not at the relevant time include Mrs Robson, although the Company's plan was that in due course, all sales staff, including Mrs Robson, would be sent on the course. Whoever in fact made the decision not to give Mrs Robson details of the course or ask her whether she was available to attend it, the Tribunal found that there was reasonable and proper cause for the decision and that it did not, therefore, breach, or contribute towards a breach, of trust and confidence.

19. To summarise, the Tribunal found nothing in the way in which Mr Farrell or Mr Reynolds managed Mrs Robson's maternity leave that, individually or cumulatively, breached the implied term of mutual trust and confidence.

#### Maternity discrimination by demotion

20. Mrs Robson alleged that, during the reorganisation that occurred whilst she was on maternity leave, Mr Farrell changed her job role in a way that effectively amounted to a demotion and that he made that decision because she was exercising her right to maternity leave. She also alleged that in confirming that decision Mr Mandell also treated her unfavourably because she was on maternity leave.
21. When the Tribunal heard the evidence on this allegation it emerged that the alleged demotion consisted of Mrs Robson being allocated to the Client Development Team rather than the Partnership Team within the reorganised business. In support of her allegation that the treatment was because of her absence on maternity leave, she pointed out that Ms Gardiner and Mr Spearing, both previously senior account managers in the same team as her, were placed in the Partnership Team.
22. The Tribunal was provided with conflicting but largely unchallenged evidence from the parties on whether Mrs Robson's commission earnings potential was higher or lower in the Client Development Team than it would have been had she been allocated to the Partnership Team. Nevertheless, the Tribunal was prepared to accept that being allocated to the Client Development Team amounted to unfavourable treatment, if only on the basis that the Partnership Team's targets were higher and membership of it could therefore reasonably be viewed as having a higher status than membership of the Client Development Team.
23. Mr Farrell's and Mr Mandell's witness statements were unclear on the mechanism by which the decision on the team to which Mrs Robson was to be allocated was made. The documentation in the Hearing files, although voluminous, provided no clearer picture. During the course of their oral evidence, however, Mr Farrell and Mr Mandell both confirmed that the decisions on where to allocate employees was based on their recent sales revenue figures. The decisions were made by Mr Wickson, Mr Skelton, Mr Kemp, Mr St James and Mr McQuade, who were to be the Sales Directors and Heads of Sales for the teams in the new structure. As a Head of Sales for the Partnership Team, Mr Farrell was due to take part in the discussions. In the event, however, he was told not to do so because he was working from home supporting his

wife who had a medical condition at the time. Mr Mandell, as a senior manager, subsequently approved the proposed allocations.

24. The figures that the Company provided showed that Ms Gardener and Mr Spearing had generated substantially more revenue than Mrs Robson. Ms Gardner had closed one deal recorded as worth £5.5m. Considerable time was taken at the Hearing on Mrs Robson's challenge to whether Ms Gardener had actually closed that deal. In response, the Company produced paperwork from which the Tribunal was satisfied that the deal was properly attributable to Ms Gardener. The Tribunal accepted that the deal was done as agent for another business and the actual revenue generated for the Company was probably substantially less than the figure of £5.5m, although the Tribunal was not told how much lower. The Tribunal was provided with no details on whether or how other aspects of the sales figures for Mrs Robson, Ms Gardener and Mr Spearing were affected by deals having been done as agents for another business. The Tribunal was satisfied that, even if the revenue from this deal had been scaled back substantially to reflect that it was only the margin on the deal that represented revenue to the Company, Mrs Robson's average sales in the eight months leading up to her maternity leave were less than Ms Gardener's.
25. The Tribunal accepted the Company's evidence that sales people in the new Partnership Team were expected to meet targets of around £250,000 per month and that, on the figures it had, the Company had grounds for believing that Mrs Robson's past sales performance did not indicate that she had the potential to meet that target. The Tribunal concluded that the reason Mrs Robson was not allocated to the Partnership Team was not because she was on maternity leave but for a reasonable and proper cause: the Company did not consider that she would be able to meet the sales targets that had been set for that team.
26. Mrs Robson asked the Tribunal to accept that Mr Farrell would have influenced the decision about the team in which she should be placed because he was concerned about the impact on his own remuneration of her inability to generate sales for the Partnership Team during her absence on maternity leave. The Tribunal found that argument unconvincing. Even if Mr Farrell had sought to influence the decision in any way for that reason, he was only one of the more junior managers due to be involved in the decisions on whom to allocate where, being a Head of Sales rather than a Sales Director. He was also unlikely to have been able to get others to agree to a decision that would be in only his interests. Further, at the time the allocation decisions were being made Mrs Robson was due back to work in three months' time, at the beginning of September. It is unlikely that the business would make a long-term decision on a team allocation that would otherwise not be in the Company's commercial interests simply because Mrs Robson was due to be absent for a few weeks.
27. The Tribunal was referred to emails between the managers involved, particularly Mr Wickson and Mr Skelton, that showed they were concerned about Mrs Robson's team allocation. The Tribunal considered, however, that these emails indicated only that these managers were concerned about managing Mrs Robson's expectations on her

return to work, in that she would be dealing with different accounts to those that she had been managing before she went on leave and was likely to be discontented as a result; they did not undermine the other evidence of the business rationale for the decision nor indicate that it related to her maternity leave.

28. In summary, the Tribunal accepted that the decision not to allocate Mrs Robson to the Partnership Team was disappointing and upsetting for her, since she viewed it as a demotion. The Tribunal nevertheless concluded that the Company had a reasonable and proper cause for its decision, which was not Mrs Robson's maternity leave, and so it did not amount to either maternity discrimination or a breach of trust and confidence. Victimisation
29. Mrs Robson alleged that Mr Mandell's decision to invite her to attend an investigatory meeting on 21 September 2018 was an act of victimisation because of her grievance she had lodged on 15 August 2018, in which she had alleged that she had been the subject of maternity discrimination.
30. Mr Mandell accepted that at the time he directed that Mrs Robson be invited to an investigatory meeting he knew about that grievance. The Tribunal accepted his evidence, however, that he acted not because of that grievance but because he had been told by Mrs Jagger that Mrs Robson had revealed during her grievance meeting that she had sent emails attaching confidential custom data to her personal email accounts. The Company's business is cyber security. Mr Mandell is a senior manager in the Company. It was entirely credible and predictable that he would take this matter very seriously.
31. In support of her allegation, Mrs Robson pointed out that Ms Kitchen, who worked in the Company's Human Resources department, and Mr Farrell had themselves sent emails with attachments containing confidential customer data to Mrs Robson's personal email account but no action had been taken against them. There was no evidence, however, that Mr Mandell was aware of those matters. Mr Mandell had reasonable and proper cause for his decision which was unrelated to Mrs Robson's grievance and the Tribunal concluded that it neither breached trust and confidence nor amounted to an act of victimisation.
32. Mrs Robson's second allegation of victimisation was that on or before the 26 September 2018 and because of her grievance Mr Mandell had instructed the Company's solicitors to write to her threatening High Court proceedings if she did not confirm she had deleted the confidential information. By this date Mrs Robson had already resigned from the Company. She had not, despite being asked to do so on more than one occasion, confirmed that she had deleted the confidential information. The Tribunal accepted Mr Mandell's evidence, which was clear and credible, that he considered it essential to protect the Company's interest by instructing the Company's lawyers to write to Mrs Robson in the terms that they did. His actions were not because of her grievance. Further, given Mrs Robson's failure to respond to earlier requests, Mr Mandell had reasonable proper cause for his decision, which did not amount to a breach of trust and confidence. In any event, even if it had breached trust

and confidence, Mrs Robson could not rely upon it in relation to her claims based on constructive dismissal because by this date she had already resigned.

Summary and conclusions

33. Because the Tribunal did not accept that the Company was guilty of any conduct that, individually or cumulatively, breached the implied term of trust and confidence, it did not accept that Mrs Robson had been constructively dismissed. She resigned because she was disappointed and upset about being allocated to a team in the new structure that she considered amounted to a demotion.
34. As Mrs Robson had not established that she was dismissed within the meaning of that term in Section 95(1)(c) ERA, her claim of unfair dismissal failed and was dismissed.
35. The Tribunal was not satisfied on the evidence it heard that any of the Company's treatment of Mrs Robson was because of her pregnancy or maternity leave. Her claims of maternity discrimination therefore failed and were dismissed.
36. The Tribunal was not satisfied on the evidence it heard that Mrs Robson was treated unfavourably in any way because of her grievance. Her claims of victimisation therefore failed and were dismissed.
37. As the Tribunal concluded that Mrs Robson resigned, her claim that the Company breached her contract by constructively dismissing her failed and was dismissed.

Employment Judge Cox

Date: 18 June 2019