



# EMPLOYMENT TRIBUNALS

**Claimant**  
Mrs T Lee

**Respondent**  
v Headway Cardiff & S.E. Wales Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Heard at:** Cardiff

**On:** 20, 21, 22 & 23 November 2017

**Before:** Employment Judge Lloyd

**MEMBERS:** Mr R Mead  
Mr H C Hamilton

### Representation

**For the Claimant:**

Dr R Dickinson, Lay Representative (Father)

**For the Respondent:**

Mrs B Huggins, Counsel

## JUDGMENT

The tribunal's unanimous judgment is that:

- 1) The claimant has not proven that she was constructively unfairly dismissed; having regard to s.95(1)(c) Employment Rights Act 1996 (ERA). We therefore dismiss her clam in its entirety.

## REASONS

### Introduction and background

1.1 The claimant claims she was unfairly constructively dismissed by the termination of her employment through her resignation which she tendered on 10 July 2016, to take effect immediately. She had been employed by the respondent since 8 August 2011 in the role of Information and Outreach Officer.

1.2 The second paragraph of her resignation letter states:

*"In light of the outcome of my grievance, I feel that I have no alternative but to resign over what I regard as a fundamental breach of contract as defined within the last straw doctrine."*

1.3 The claimant presented her ET1 on 5 October 2016. In evidence to this tribunal, the claimant stated that the last straw relied on in her case was, specifically, Rebecca Pearce's ("RP") email to staff dated Thursday 7 July 2016; subject Lisa Lambly ("LL")... *"Hi all, I'm just emailing you to update you that Lisa has been reinstated as of today. I'm sure you will be pleased to welcome her back."*

1.4 It is clear from the evidence before us that the claimant's claim arises directly from her working relationship with her line manager LL. She relies on what she says she perceived to be bullying, micro-management and an overbearing management style on LL's part. Also, the respondent's failure to deal with her grievance against LL in the circumstances of her allegations as described.

1.5 The claimant has previously withdrawn her accompanying claim of detriment by reason of a public interest disclosure ("whistleblowing").

### **The issues**

2.1 It is not entirely clear whether the claimant agrees the constructive unfair dismissal issues which the respondent has scheduled in its List of Issues. However, for the avoidance of doubt and confusion we have no dispute with the respondent's summation of the issues which must be addressed in the claim. They may be expressed as follows:

2.1.1 Was the claimant dismissed pursuant to Section 95(1)(c) Employment Rights Act 1996 ("ERA")? If so, was that dismissal unfair having regard to s.98(4) ERA.

2.1.2 Did the respondent commit a fundamental breach of an implied, or express, term of the claimant's contract of employment?

2.1.3 Did the following acts occur, specifically related to the claimant's engagement with LL. If so did they, individually or cumulatively, amount to a fundamental breach of contract;

- a) "micromanaging" the claimant.
- b) the management style of LL.
- c) requesting that the claimant record her activities and time so spent
- d) not answering all the parts of the claimant's grievance
- e) the relevance of the witnesses questioned in investigating the grievance
- f) the email sent to all staff to welcome the return of LL
- g) did the claimant respond to any fundamental breach in a timely manner

2.2 We have heard the evidence in the case on both sides over 3 days. The claimant knows that she has the burden of proof to show that the respondent committed a repudiatory breach of the employment contract; and that her resignation was a direct response to the breach. That is the underpinning legal principle for us to apply. However, the case is essentially one couched in factual finding more than substantive law. The crux of our judgment follows on from the principal findings we make on the complaints made by the claimant against the respondent, and specifically LL.

2.3 We took evidence from the claimant. For the respondent we heard the evidence of:

- Lisa Lambly (LL), - community services manager, (the claimant's line manager)
- Julie Smith (JS) - formerly administration and development manager,
- Rebecca Pearce (RP) – respondent's chief executive officer
- Andrew Harding (AH) – chair of the board of trustees.

2.4 There was a substantial agreed bundle of documents, of 416 pages.

### **Relevant Law**

3.1 The parties are in agreement as to the relevant law which applies to the claims brought by the claimant in these proceedings. I shall deal briefly with the relevant law on the issues before the tribunal.

### ***Constructive dismissal***

3.1.1 For the purpose of an unfair (constructive) dismissal claim, the relevant **definition of dismissal** is that in Section 95(1)(c) of the Employment Rights Act 1996 ("ERA"); where, "the employee terminates the contract under which he<sup>1</sup> 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."

3.1.2 Whether, for the purpose of this provision, an employee is "entitled" to terminate his contract of employment "without notice by reason of the employer's conduct" must be determined in accordance with the law of contract. The words "entitled" and "without notice" in the statute are the language of contract connoting that as a result of the employer's conduct the employee has the right to treat himself as discharged from any further performance of the contract. A test of "unreasonable conduct" was incorrect; see Western Excavating (ECC) Limited v Sharp [1978] IRLR 27.

3.1.3 A constructive dismissal is not automatically unfair. It is necessary for the tribunal to make findings as to the reason for the dismissal and as to whether in all the circumstances the respondent acted reasonably: the only way in which the requirements of ERA section 98(4) can be made to fit in a case of constructive dismissal is to require the employer to show the reasons for their conduct which entitled the employee to terminate the contract thereby giving rise to a deemed dismissal...."

3.1.4 A repudiatory breach (or breaches) of contract by the respondent is one which is (or are) repudiatory in nature; that is going to the root of the contract or showing that the respondent no longer intends to be bound by one or more of the essential terms of it: see Western Excavating above.

3.1.5 There is implied into every contract of employment a mutual obligation, not without reasonable and proper cause to act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: it is not necessary that the employer should have intended any repudiation of the contract: There are three questions, (1) what is the conduct of the employer that is complained of? (2) did the employer have reasonable and proper cause for that conduct? (if so, the matter ends there) (3) was the conduct calculated to destroy... the relationship..., the test is whether the employer's conduct so impacted on the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract: An employee will be regarded as having accepted the employer's

---

<sup>1</sup> The expression is intended, here, to be gender neutral

repudiation only if his or her resignation has been caused by the breach of contract in issue.

**Findings of fact; analysis and application**

4.1 We have no dispute with the chronology of events prepared by the respondent's counsel and we adopt it as the starting point of our findings of fact.

4.2 All the witnesses had prepared written statements of evidence. We were satisfied that the respondent's witnesses had given credible evidence in writing and in their live evidence.

4.3 The evidence of LL was we think given with honesty and integrity and we were generally impressed with her as an experienced professional in her role at the respondent; including her function as the claimant's line manager.

4.4 The claimant's evidence was not given with duplicity. However, we do not find it sufficiently cogent evidence for us to conclude on the balance of probabilities, that she was the victim of a fundamental breach her contract of employment; specifically, a breach of the mutual duty of trust and confidence. We believe that along with her representative, her father Dr Dickinson, she is confused as to what might constitute such a collapse of trust. That cannot be, simply, a disagreement or a difference of opinion with a manager or not having one's own preferences followed. It is not dissatisfaction with the working environment or even a dislike for a line manager.

4.5 Moreover, even plain unreasonableness on the part of an employer is not sufficient itself to give rise to a fundamental breach of the contract and the mutual confidence which underpins it. It needs to be exceptional conduct which goes to the very root of the contract and the employment relationship. Here, the claimant was undoubtedly dissatisfied with her lot and with LL's authority to line manage her. LL took a different view from the claimant as to how things should be done and what procedures should be implemented. That was part of LL's job as we find it; including the line management of the claimant. But there was nothing we find which was repudiatory of the relationship. The employer has the right to manage. As the claimant's line manager, LL had been delegated that right. The claimant has an implied duty to follow reasonable instructions. We do not find that LL gave unreasonable instruction to the claimant which she was entitled to refuse or to treat as repudiatory conduct by LL. We do not accept the allegations that LL was an overbearing manager with a micro-managing style. As we find it, the claimant was resistant to instruction because, quite simply, she thought she knew better. If the claimant was not satisfied with the environment in which she worked, she plainly had the right to leave her job; but that does not of itself constitute an unfair constructive dismissal.

4.6 The claimant is we find an able and aspirational individual in the workplace. She prefers to work on her own and on entirely her own initiative with her own power of decision making. That was evidenced by the claimant's preference for the "needs must" supervision of her work while LL was on maternity leave. That is indicative of the claimant's reluctance to work as a team player, rather than evidence that LL's supervisory regime and management style was oppressive or overbearing. The claimant's self-motivation on one level is an admirable quality. On another level, however, (and we feel this is relevant to the claimant's case) it means that the claimant is an employee who is very resistant

to taking the instruction and direction of others. The claimant we think clearly exhibited that demeanour. An employee who is part of a managed team cannot demand such autonomy as a matter of contractual right; so as to argue, if autonomy is not granted, a repudiation of trust between the parties.

4.7 We have found nothing in the requests and instructions issued to the claimant by LL, JS or RP which was unreasonable let alone a fundamental breach of contract. Moreover, when LL returned from maternity leave, she was neither overbearing nor undermining of employee trust in resuming her line managerial role and reviewing and changing as needed, procedure and protocol in the working of her team. There was nothing in that we find that compromised trust and confidence between the claimant and the respondent or the claimant and LL in their personal working relationship.

4.8 LL's appraisal and performance management of the claimant was balanced; with a mixture of positive and negative factors. We did not find that to be unfair or overbearing. An appraisal is rarely a statement of absolute perfection. We find LL's approach and conclusion uncontroversial.

#### The grievance

4.9 The investigation and outcome of the grievance was managed by the chair of the Board of Trustees, Andrew Harding, a solicitor.

4.10 The claimant presented her grievance on 9 June 2016 (350 & 350A). It was emailed to Mr Harding's office address. The substance of the grievance is;

*"I wish to raise a grievance regarding the unnecessarily disruptive and inappropriate style of my line management. Problematic issues in this area were identified and raised on numerous occasions since the commencement of my employment, but remain unresolved...recent incidents have brought into question both my professionalism and ability to operate with any degree of autonomy into question...this is due... to the lack of understanding on the part of my immediate management (LL)..."*

4.11 Following a grievance meeting on 28 June 2016 it was decided that LL would be suspended whilst the investigation was carried out. We find that was the procedurally correct action to take in all the circumstances; but clearly it did not affix LL with guilt. We find that the grievance investigation process was fair and sufficiently wide ranging so as to give a fair and balanced determination of the claimant's complaint.

4.12 We think that our proper approach to this evidence is to ask whether all reasonable enquiries were made and all relevant evidence fairly and objectively considered. We think it was. In any situation of this sort it is always possible to argue that some other enquiry or enquiries could have been made. That is not the appropriate test for us in our conclusion. The appropriate analysis must be whether all reasonable enquiry and investigation had been carried out in all the circumstances. We think it had. Mr Harding might have asked other employees not under LL's supervision for their observation of the relationship between LL as a manager and the claimant. He did not. We do not think it unfair and certainly not repudiatory for him not to have done so. The essence of the enquiry was of the experience of LL as a line manager.

4.13 Equally the email of 7 July from RP to the staff was post-decision. A consideration of that by Mr Harding and his co-trustees would have taken the grievance issue – (the relationship with LL as a line manager) no further.

4.14 There is in our view no diminution of the trust and confidence between the claimant and the respondent by its handling of the claimant's grievance or its outcome. The claimant inevitably did not agree the decision; but that would surely be expected. The real issue is whether the grievance was handled properly. We find that it was. Moreover, Mr Harding we think genuinely wanted to reconcile the differences between the claimant and LL; and to bring them both back to work effectively as a team. That it transpired was a vain hope.

4.15 The grievance decision was not appealed by the claimant, and we understand the claimant's rationale for that. She regarded her relationship with the respondent as repudiated, she intended to make a constructive dismissal claim; and she feared that an appeal would in some way ratify the contract. We do not as such criticise her for that. It is clear that she had concluded she could not remain in the respondent's employment beyond that time. That is her prerogative. But it is not in this case, grounds for establishing constructive unfair dismissal.

### **Application of Law to the Facts**

5.1 Dr Dickinson for the claimant has set out the cornerstone points of the claimant's case as follows.

5.2 The relationship had completely broken down; irretrievably

5.3 There was lack of support from the line manager (LL) with reference to the claimant's relationship with service users and any criticism of the claimant's conduct in engaging with service users.

5.4 The grievance investigations and the finding were inadequate and ill-considered and the outcome of the grievance was wrongly decided.

5.5 The last straw was the email of 7 July. By RP's issuing of that email to staff in the light of the grievance outcome there is a complete disregard for the claimant's position; how she feels and how she is seen by her colleagues. It is plain indifference to the claimant's feelings.

5.6 The claimant did not believe that she could continue to function in that role after that final straw.

5.7 We remind ourselves that the burden is on the claimant to prove on the balance of probabilities that LL's conduct was calculated in such a manner as to destroy the implied term of trust and confidence. The claimant's case is now narrower even than the management style of LL; rather it is focused on the personal relationship between herself and LL. Their interaction gave rise to a friction which eroded the claimant's confidence and ability to continue her customer facing role. But the claimant was not the only customer facing employee. Ruth Harris (RH) had the same role. RH was effective in her role under LL's supervision and left only because of better prospects. There is no

evidence to support the claimant's contention that LL's relationship with the claimant was calculated to destroy the mutual trust between a manager and her team member.

5.8 We have no evidence before us on which to conclude that LL's management of the claimant was unacceptable and eroding of the mutual trust implicit in the employment contract. We think that LL was professional in her line managership, and that she carried out balanced supervisions of the claimant who had the right to amend had she elected so to do. The much earlier performance improvement plan (PIP) had been necessary in the early stages of the claimant's employment; and had been effective in addressing her developmental needs in the role. The professional development review (PDR) was a fairly represented mix of achievement and continuing aims and objectives to meet.

5.9 The claimant in answer to my question stated she would have answered the specific questions in RH's exit interview no differently to RH herself; approving of LL's management – quite contrary to the case which the claimant actually advances.

5.10 There were good management reasons for the claimant being asked to provide more detail for her timesheets and there is no evidence of her being singled out for scrutiny. Moreover, the referral process was to promote transparency in a progressively expanding organisation.

5.11 We can find or infer nothing from the evidence given by JS and RP to conclude that they were unduly critical or undermining of the claimant's position within the respondent. In truth, of course, they play no critical part in the claimant's case of repudiation at all; given that the claimant's allegation of breach of trust and confidence lies with LL. But for completeness we say that we find no conduct on the part of JS or RP with could be found to be undermining of the claimant's employment relationship.

## **Conclusion**

6.1 We cannot conclude, therefore, that the claimant has discharged her burden of proof to show a repudiatory breach of contract by the respondent or its employees (and specifically LL) entitling her to resign.

6.2 The claimant obviously became very unhappy with her lot in the respondent's employment. But that unhappiness or dissatisfaction was not borne of a destruction of trust and confidence by the respondent's action or omission in its management of the claimant.

6.3 She was not managed oppressively or unreasonably as she perceived she was. That perception was we are afraid to say more imagined than real. Undoubtedly, the claimant is a capable and motivated person. She finds supervision, we think, irksome. However, she has failed to recognise in her case that an employer has the right to manage to achieve its aims and to fulfil its obligations to its users, its managers and its team members. What it shall not do in that process is alienate the trust and confidence of its employees to such an extent as to repudiate the very relationship on which the contract of employment subsists. To do this an employer's conduct must be not merely unreasonable or

irksome but exceptional and dismissive of the trust on which the employee is entitled to rely.

6.4 We find insufficient evidence advanced by the claimant to draw us to that conclusion.

6.5 We dismiss her claim.

-----  
Employment Judge Lloyd  
Signed and Dated: 21 February 2018

JUDGMENT SENT TO THE PARTIES ON  
.....24 March 2018.....

-----  
FOR EMPLOYMENT TRIBUNALS