



EMPLOYMENT TRIBUNALS

Claimant: Miss S Morgan

Respondent: IW Group Services UK limited

Heard at: Cardiff **On:** 15, 16 July 2019

Before: Employment Judge Ward

Representation:
Claimant: Mr Goodwin (counsel)
Respondent: Mr Naylor (solicitor)

RESERVED JUDGMENT

1. The case is dismissed, the claimant was not constructively dismissed.

REASONS

The issues

1. The claimant asserts that she was constructively dismissed from the respondent's employment when she resigned on 4 October 2017. The respondent resisted the claim and the matter came before the Tribunal for a two day hearing. At the commencement of the hearing the parties agreed that the issues were, whether an act or omission (or a series thereof) by the respondent cause the claimant to resign; did the act(s) or omission(s) by the respondent amount to a fundamental breach of contract; did the claimant affirm the breach and if the claimant has been constructively dismissed then has the respondent shown the reason for dismissal; was the dismissal and potentially a fair one and did the respondent otherwise act reasonably?

2. A preliminary issue at the commencement of the hearing was the witness order for Mr Barnett, who attended the first day of hearing with a prepared witness statement, which was exchanged with the respondent and apart from the final paragraph that was redacted, the parties agreed that it could be submitted in evidence. The respondent made no application for the hearing to be postponed based on the information contained in that statement.

The applicable law

3. Section 95 (1)(c) of the Employment Rights Act 1996 states that an employee is dismissed by his employer if 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.

The evidence

4. The tribunal heard evidence from Miss Morgan and Mr Barnett (by way of a witness order) and for the respondent Ms Clifton, and Ms Thomas. The parties provided an agreed bundle of documents.

The relevant facts

5. The claimant was employed as a community manager responsible for the Brunel House site, which is a high rise serviced office and meeting space facility in Cardiff.
6. Initially the claimant worked full time but was interested in part time working which she had mentioned to her manager Ms Clifton but it had not progressed. She had also made the request to Mr Allen (area director) but had been led to believe that it was not possible.
7. On 15 February 2019 the claimant's appraisal said she was doing well and demonstrated a good understanding of debt.
8. On 21 February 2017 the claimant was able to ask the regional director about working part time and he immediately agreed to a reduction in hours. This changed the claimant's hours to five days per fortnight. At this time a Ms Andrews was employed unfortunately not as a job share with the claimant but as a community associate, a subordinate role to the claimant. Following a period of training which the claimant provided to Ms Andrews her part time hours commenced in or around 24 April 2017.

9. The claimant struggled to complete all her tasks within the part time hours without an equal job share.
10. In June 2017 Mr Allen (area director) told the claimant that she could no longer work part time and had to work 32 hours per week. Mr Allen was not called by the respondent to give evidence so this was not challenged.
11. The claimant reluctantly agreed as she felt she had no choice in the matter and Ms Andrews was relocated to another centre.
12. The claimant continued to struggle with the backlog of work with her feeling unsupported which culminated in a period of sickness for 2 weeks at the end of June 2017.
13. Another community associate was employed to provide support but this wasn't full time at the Brunel site. And on return although the claimant was given sometime to catch up on the backlog of work it was insufficient for real progress to be made.
14. On 23 August 2017 Ms Clifton asked to speak to the claimant and advised that a disciplinary procedure would be commenced due to high debt levels at the centre. Ms Clifton had been asked to investigate this issue by Mr Allen.
15. The claimant was shocked for although she knew there was an issue she didn't expect to be subject to such proceedings. The claimant explained that the reason for the debt was due to the high work load and sheer backlog of work.
16. On 31 August the claimant was invited to a disciplinary hearing.
17. Another area manager Ms Thomas convened a disciplinary hearing. She was invited to undertake this task by HR. She considered the levels of debt at the centre and issued the claimant with a final written warning on 13 September 2017. Although at this time the claimant had a clean disciplinary record the respondent's procedure allows for any sanction to be applied and given the seriousness of the debt at the centre Ms Thomas thought this was appropriate.
18. The claimant complains about the way that the matter was investigated and determined, with no witness statements from other workers, inaccurate notes of an investigation meeting, an up to date debt report, only one panel member chairing the disciplinary who was inexperienced and an improvement plan with immediate actions. These were not denied by the respondent other than a difference of opinion on the investigation notes that were in any event written after the event.

19. The claimant felt this penalty was unfair and appealed this decision. This was heard by Mr Allen on 28 September 2019. The appeal was not upheld and the claimant felt there was no option but to resign.

Conclusions

20. The claimant resigned due to the respondent's handling of the disciplinary matter which had been caused by the claimant struggling to undertake all the tasks required of her with adequate staffing at the centre.

21. The relationship of employer and employee is regarded as one based on a mutual trust and confidence between the parties. It is a fundamental breach of contract for the employer, without reasonable and proper cause, to conduct itself in a manner 'calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties.'

22. In this case although the tribunal finds that Mr Allen did say that the claimant would be managed out prior to any disciplinary investigation, there was also escalating debts in the centre, a matter the claimant accepts. The issue in this case as the Tribunal concludes is the claimant does not feel that her mitigation was accepted and the ultimate sanction of a final written warning was unfair.

23. The reason for the final written warning and improvement plan was the level of debt at the centre and not a process to manage the claimant out.

24. The procedural errors identified are not serious enough to amount to a breach to a repudiatory breach of contract individually or collectively.

25. As a conclusion the respondents acts did not amount to a fundamental breach of contract.

Employment Judge
Dated: 13 August 2019

JUDGMENT SENT TO THE PARTIES ON
.....17 August 2019.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS