



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs A Neil

v

ABF Grain Products Limited

Heard at: Huntingdon

On: 31 July 2019

Before: Employment Judge Ord

Appearances

For the Claimant: Mr D Panesar, Counsel.

For the Respondent: Mr A Moore, Solicitor.

JUDGMENT

Upon hearing counsel for the claimant and the solicitor for the respondent;

1. No order is made on the application to strike out part of the respondent's response.
2. The allegation contained in the respondent's further particulars dated 22 May 2019, in paragraphs 1.6 and 1.7 have little reasonable prospects of success and the respondent is to pay a deposit of £1,000 as a condition of continuing to advance the allegation or argument pursued in those paragraphs, such payment to be made by 28 August 2019.

REASONS

1. The claimant made applications to strike out part of the respondent's response as amplified in the respondent's response to the claimant's request for further and better particulars.
2. One of the complaints which the claimant makes in these proceedings is that she was "constructively" unfairly dismissed, i.e. that her resignation was made in circumstances which constitute a dismissal under s.95(1)(c) of the Employment Rights Act 1996.

3. In their response to the claim the respondent stated (paragraph 49 of the document dated 26 September 2018) that if (which is denied) the claimant was dismissed the respondent would contend that it had a fair reason for dismissing the claimant, namely for either some other substantial reason or for capability.
4. This application is made in relation to the contention that the respondent had some other substantial reason sufficient to justify the dismissal of the claimant from her position and is made in the light of the further and better particulars provided by the respondent on 22 May 2019 in paragraphs 1.6 and 1.7 of those particulars which state as follows:-

“1.6 Further, paragraph 42 of the respondent’s response states:

“In the course of the appeal hearing Sarah Arrowsmith the CEO of the Grocery Division within which JDR operates, again explored with the claimant the possibility of her taking an alternative role at JDR. The role would be at Board level, which would allow for a more balanced workload including a 4 day week, but the claimant rejected that proposal on the basis that she felt that returning to JDR would be untenable. Her decision was apparently based on her view of the difficulty she would have working with Paul Murphy the CEO and Laura Haviland the HR Director.”

1.7 As such there was a breakdown in the relationship of trust and confidence between the claimant and the respondent, which was a substantial reason to justify the claimant’s dismissal.”

5. The claimant says that this is a circular argument because in the claimant’s view the respondent purports to justify as a fair dismissal, a constructive dismissal based on the breakdown of trust and confidence between the parties upon which the claimant herself relies as establishing a fundamental breach of contract by the respondent entitling her to terminate her contract of employment in circumstances which amount to a dismissal.
6. In other words, the claimant says, the very conduct about which the claimant complains had caused the breakdown of trust and confidence upon which the respondent seeks to rely as being a justification for dismissal.
7. In reply the respondent says that the breakdown in the relationship evidenced by the claimant and which, it is therefore said, the respondent could rely upon to justify any dismissal (none being admitted) was separate from any breach of trust and confidence on which the claimant relies for the purposes of s.95(1)(c). Precisely how, in the circumstances of this case, the two were separate was not set out in detail.

8. I find that a difficult argument to accept, both conceptually and in the circumstances of this case practically. The two individuals (Mr Murphy and Ms Haviland) were closely involved in the matters about which the claimant complains and their conduct forms at least a substantial part of the matters complained of by the claimant.
9. Accordingly, it is hard to envisage circumstances, in the facts of this case, where the respondent could establish that the fundamental breach on which the claimant relies – if established – would not preclude the respondent from seeking to rely upon the breakdown of trust and confidence as set out in the respondent’s further and better particulars.
10. I am not, however, satisfied that that argument has no reasonable prospects of success. It is an argument which I consider to be fraught with difficulty but it would be wrong to strike out that part of the response without testing the point on evidence.
11. I am, however, satisfied that the argument has little reasonable prospect of success for the reasons already set out. The two individuals about whom the claimant stated she would have difficulty working with were both closely involved in the matters on which the claimant relies to establish the fact of dismissal. It seems to me most unlikely that the breach of trust and confidence on which the claimant relies, if established, would not prevent the respondent from running that defence but it is not possible for me to say that there is no reasonable prospect of establishing it. I do consider, however, that the respondent has little reasonable prospect of success in pursuing this line of argument and accordingly I make a deposit order in the sum of £1,000, pursuant to rule 39 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as a condition of the respondent continuing to advance the arguments set out in paragraphs 1.6 and 1.7 of the further and better particulars dated 22 May 2019. That sum is to be paid to the tribunal by not later than 28 August 2019.

Employment Judge Ord

Date: 7 August 2019

Sent to the parties on:

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For the Tribunal Office