



EMPLOYMENT TRIBUNALS

Claimant: Mr Peter Ward

Respondent: Fiducia Comprehensive Financial Planning Ltd

Heard at: Nottingham

On: 15 and 16 May 2019
5 July 2019

Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: Ms A Pitt of Counsel (on 15 & 16 May 2019)
Mr Van Heck of Counsel (on 5 July 2019)

Respondent: Mr D Bansal, Solicitor

JUDGMENT

The judgment of the tribunal is that:-

1. The Claimant was constructively and unfairly dismissed.
2. The issue of remedy is agreed. The Respondent shall pay to the Claimant compensation for unfair dismissal of £17,199.12 net.

REASONS

1. This is a complaint of constructive unfair dismissal.
2. The judgment of the tribunal was given orally at the conclusion of the hearing. The parties then agreed remedy. These reasons are issued following a request by the parties.
3. The Claimant was employed by the Respondent as a Senior Financial Adviser from 19 January 2009. On 21 May 2018, he gave the Respondent three months' notice to terminate his employment (the "first resignation"). His complaint in these

proceedings is not however related to the circumstances of his first resignation. His complaint is that the Respondent's actions during his notice period constituted a breach of the implied term of trust and confidence which forced him to resign earlier than his notice would have otherwise expired (the "second resignation"). It is agreed that for present purposes the effective date of termination was 7 June 2018.

4. The Claimant relies on a breach of the implied term of trust and confidence only. His case is that the conduct of the Directors of the Respondent entitled him to resign in circumstances amounting to constructive dismissal. His allegations in respect of that are as follows:

4.1 That he was subjected to bullying and intimidating conduct at a meeting with Mr Marcus Grimshaw, one of the Directors, on 25 May 2018;

4.2 That the Respondent knowingly raised false and spurious allegations against him;

4.3 That the Respondent 'blackmailed' him, or threatened to do so that unless the Claimant signed an agreement lengthening his post-termination restrictive covenants the Respondent would pursue allegations of gross misconduct which were without substance in order to tarnish his professional reputation;

4.4 That the Respondent applied excessive pressure on the Claimant to sign the aforementioned restrictive covenant agreement and discouraged him from seeking legal advice on its terms;

4.5 That the Respondent caused the Claimant to suffer work related stress and anxiety as a result of their behaviour.

5. Mr Ward joined the Respondent in January 2009. He was a highly regarded financial adviser and high performer who introduced a significant amount of revenue for the business over the years. However, he became dissatisfied with the amount of pressure at work and the work/life balance. The pressure became such that the Claimant felt his mental health was beginning to suffer.

6. On 21 May 2018, Mr Ward gave his notice to resign in 3 months. In the letter he thanked the Directors for the opportunities but said he wanted to spend more time with his family and look after his own wellbeing. The Directors of the business who had always regarded him as a valuable employee asked him to reconsider. Mr Ward said he would think about it but having thought about his decision was still to leave.

7. On 25 May 2018, after the Claimant had reaffirmed his decision to leave the Claimant had a meeting with Mr Marcus Grimshaw, one of the Directors though not the Claimant's direct line manager. Mr Grimshaw wanted to know where the Claimant was going to work after he left and what he was going to do. He was naturally concerned about protecting the future of the business. Mr Ward indicated that he was planning to go and work with Ms Catlin, a former colleague. Mr Grimshaw was concerned that the Claimant might take away potential business away. The discussion became increasingly hostile on Mr Grimshaw's part. He told the Claimant that if he took up employment with a competitor he would treat the Claimant in the way he had

treated Ms Catlin. Both knew what that meant. It was well known within the Company that Mr Grimshaw had been less than pleasant to Ms Catlin after she had decided to leave. There were rumours that he arranged for a strongly worded letter to be sent to the Ms Catlin's home address intimating legal action against her on the day that she was due to get married. It could have been sent on any other day but was timed in order to cause maximum distress. Mr Ward felt intimidated and harassed by Mr Grimshaw's behaviour. On two occasions, he said he felt the need to end the meeting but Mr Grimshaw continued to forcefully express his views as to what would happen if the Claimant joined Ms Catlin.

8. The Claimant's evidence, which I accept, is that he was so shaken that he subsequently broke down in tears. After the meeting Mr Ward rang a fellow Director, Mr Anthony Scott, and explained what had just happened. Mr Scott's sympathetic. He told that the Claimant that he in future everything should go through him rather than Mr Grimshaw.

9. Shortly afterwards, the Claimant received a telephone call from an employee of an organisation called 'Openwork' as to a possible regulatory compliance breach. I should add that at this stage, the Respondent's understanding of Openwork is clearly misunderstood. Openwork is not as they seem to suggest the regulatory financial body. They are a private company who provide compliance services. The regulatory body is The Financial Conduct Authority (FCA). Openwork merely provides services to their clients, one of whom is the Respondent. The only body that regulates is the FCA

10. On 29 May 2018, the Claimant was invited to a meeting at Mr Scott's house. Mr Scott wanted to know what the Claimant was planning to do and whether he wished to remain as a Financial Adviser. There was a discussion about a recent suspected breach of the rules of financial regulatory rules. Mr Scott suggested that the Claimant should take a sabbatical instead of leaving if the work pressures were too great.

11. On 30 May 2018, there was a further meeting between the Claimant and Mr Scott. On this occasion, Mr Scott was less than his usual sympathetic self. In fact it is alleged he was aggressive and pointed out that serious misconduct on the part of the Claimant had been discovered by the Respondent and Openwork. This included Mr Ward using company email for personal purposes, sending documents from work to his personal mail address, failing to advise the Respondent and/or Openwork that the Claimant had inherited a large sum of money from a client of the business and holding himself out as a solicitor when he was not.

12. On 4 June 2018, the Claimant was sent a draft restrictive agreement which would extend the existing restrictive covenants already in place from 12 months to 24 months after termination. The Respondent threatened the use of clawbacks in respect of commission that had already been earned if the Claimant did not sign this. The Claimant felt very pressurised but refused to sign. He went to his GP and was signed off sick. He also sought legal advice as to whether the Respondent could lawfully insist on it.

13. On 7 June 2018, the Claimant submitted his second resignation and left

employment forthwith.

THE LAW

14. Section 95 of the Employment Rights Act 1996 (which it is unnecessary to set out here) deals with a situation where the employee resigns in circumstances where the resignation is treated as a dismissal by the employer. Whether an employee is entitled to do so depends on principles established in caselaw.

15. In **Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27**, for an employee to succeed in demonstrating that he has been constructively dismissed, the tribunal must be satisfied that the employer has either broken a principal term or terms of the contract or has evinced an intention to no longer be bound by one or more of those terms. The breach must be of such seriousness as to strike at the very root of the contract. The employee must resign in response to an alleged breach.

16. In this case the Claimant relies on a breach of the implied term of trust and confidence. In **Malik v BCCI [1997] ICR 606**, the House of Lords set out the definition of the implied term of trust and confidence, which is that the employer:

“... without reasonable proper cause, conducts itself in a manner calculated and [or] likely to destroy or serious damage the relationship of trust between employer and employee.”

CONCLUSIONS

17. Whilst it is always difficult to decide on allegations of bullying behaviour (as much depends upon the personal perception of the parties) I am satisfied that the meeting on 25 May constituted bullying and intimidating behaviour by Mr Grimshaw. I arrive at that conclusion for the following reasons:

17.1 The Claimant was sufficiently upset to complain to Mr Scott of the treatment. He is unlikely to have done so if Mr Grimshaw's behaviour had not been something out of the ordinary. The Claimant had considerable experience of dealings with Mr Grimshaw over the years and knew of his personality. There is nothing to suggest that any prior meeting had resulted in the same or similar adverse reaction. This meeting must have been exceptionally difficult for the Claimant to have been reduced to tears.

17.3 I am satisfied that Mr Grimshaw made references to how he treated Ms Catlin and that these were intended to intimidate and bully the Claimant into either not joining a competitor or to reconsider leaving. There was no other reason to mention it.

17.4 I accept the Claimant's evidence that he attempted to end the meeting on two occasions but was unable to do so because of Mr Grimshaw's intimidating behaviour. It is an indication of the unpleasantness of the conduct that Mr Ward felt compelled to leave the meeting.

18. I am also satisfied that the Respondent made false and spurious allegations against the Claimant in an effort to pressurise him into either accepting the terms of the extended restrictive covenant agreement or to deter him from joining a potential competitor. I am satisfied that the allegations of misconduct were wholly disingenuous.

If there was any substance in them they should have been reported to the FCA but there is no evidence of them ever being reported. I am satisfied the reason for that was because the Respondent's Directors did not believe there was any substance to them.

19. The fact that the Claimant was sending emails to himself from the business was not unusual and there are no company rules against it.

20. The Respondent was fully aware of the fact that the Claimant was a beneficiary under the Will of a client. This had been discussed with the Respondent. There were internal emails passing between Mr Grimshaw and Mr Scott concerning the Trust created by the Testator that the Respondent's business would manage. The relevant Will was on the Respondent's database. It is clear from the terms of Will that the Claimant was a beneficiary. It is inconceivable that the Respondent would have placed the Will on their database without reading it. It is also inconceivable that the Respondent would have acted or intended to act as managers of the Trust without knowing the terms of the Will. I do not therefore accept the Respondent's evidence that they were wholly ignorant of the Claimant's beneficial interest in the estate. The Claimant may have been unwise in not informing Openwork or confirming that in writing to his employer but that does not necessarily detract from the fact that the Respondent was aware of the position.

21. I am satisfied that the Respondent applied inappropriate and excessive pressure on the Claimant to execute the extended restrictive covenant agreement. Whilst the term 'blackmail' may be somewhat emotive, there is no doubt that the Respondent made it clear to the Claimant that if he refused to sign the new draft agreement they would pursue allegations of gross misconduct against him which would undoubtedly tarnish his professional reputation. In doing so, it is regrettable that Openwork became a party to these unfounded allegations. Openwork's "investigation" was not undertaken fairly or with any real input from the Claimant. It is also regrettable that despite saying that they did not wish to involve itself in a contractual dispute that is precisely what Openwork did. The Respondent who has been legally represented has not sought to call any evidence from Openwork to establish the truth of the allegations.

22. I am satisfied that the allegation that the Claimant held himself out as a solicitor is without substance.

23. There has been no expert evidence provided by the Respondent as to what emails, if any, were deleted or amounted to an improper use.

24. I am therefore satisfied that the Claimant resigned on the second occasion in response to a breach of the implied term of trust and confidence. Such conduct clearly meets the **Malik** test.

25. I am satisfied the Claimant resigned in response to the breach. There was no reason for him to cut short his notice period otherwise. He did not delay in doing so nor did he affirm the breach.

26. Although the Respondent argues in the alternative that the dismissal, even if constructive, was nevertheless fair, the Respondent has failed to establish facts from

which a potentially fair reason may be found. The constructive dismissal was therefore unfair.

26. Following the announcement of the decision on liability the issue of remedy was agreed.

Employment Judge Ahmed

Date: 25 September 2019

JUDGMENT SENT TO THE PARTIES ON

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