



EMPLOYMENT TRIBUNALS

Claimant: Mrs CT Robinson
Respondent: Breingtons Limited
Heard at: Ashford
On: 23 July 2019
Before: Employment Judge Pritchard

Representation

Claimant: In person assisted by her husband, Mr A Robinson
Respondent: No appearance

JUDGMENT

- 1 The correct name of the Respondent is Breingtons Limited and the title to these proceedings is amended accordingly.
- 2 The Claimant's claim that she was unfairly dismissed is well-founded and accordingly succeeds.
- 3 The Respondent is ordered to pay to the Claimant compensation as follows:

Basic award:	$£440.00 \times 1.5 \times 2 =$	£ 1,320.00
Compensatory award:	Loss of wages	£ 4,130.80
	Loss of pension contributions	£ 167.44
	Loss of statutory rights	<u>£ 400.00</u>
Total		£ 4,698.24

Uplift of 25% by reason of the Respondent's unreasonable failure to comply with the ACAS Code of Practice

£ 1,174.56

Increase to the award of two weeks' pay by reason of the Respondent's failure to provide the Claimant with an accurate written statement of employment particulars (including a failure to identify correctly the name of the employer)

£ 880.00

Total award £ 8,072.80

REASONS

1. The Claimant claimed she had been constructively and unfairly dismissed. The Respondent resisted the claim but failed to attend the hearing to give evidence and make submissions in defence of the claim. It is noted that the Respondent is now in creditors voluntary liquidation.
2. The Tribunal heard evidence under oath from the Claimant. She was a credible witness. The Tribunal was provided with a number of documents to which it had regard.

Findings of fact

3. The Claimant, date of birth 12 October 1966, commenced employment with the Respondent on 15 November 2015 as a receptionist/booking coordinator. At interview, the Claimant made it clear to the Respondent that she needed 40 hours' work each week if she were to meet her financial commitments. She was assured that this would not be a problem. The Respondent subsequently issued the Claimant with a statement of principal terms and conditions of employment. Under the heading "Hours of Work", the document states "You shall work a minimum of 40 hours per week".
4. The Claimant was paid £11.00 per hour and worked 5 days each week. Her gross wage was £440.00 per week (although she would also work overtime when required).
5. On 14 August 2018, the Claimant was informed by the Respondent that her contracted hours were forthwith reduced to 30 hours a week.
6. The Claimant wrote to the Respondent the following day complaining in writing about the unilateral reduction in hours which had been decided upon without any prior notification or discussion. She tendered her resignation with effect from 24 August 2018.
7. The Respondent did not take any steps to consider the grievance raised by the Claimant in her letter.

Applicable law

8. Section 95(1)(c) of the Employment Rights Act 1996 provides 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.
9. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:
 - 9.1. that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign,

(whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach); Whether there is breach of contract, having regard to the impact of the employer's behaviour on the employee (rather than what the employer intended) must be viewed objectively: Nottinghamshire CC v Meikle [2005] ICR 1.

- 9.2. that the breach caused the employee to resign; and
- 9.3. that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
10. All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.
11. Under section 98(1) of the Employment Rights Act 1996, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).
12. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and must be determined in accordance with equity and substantial merits of the case.
13. Section 124A of the Employment Rights Act 1996 together with 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 provides that where an employer has unreasonably failed to comply with the Code of Practice, a Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase the compensatory award by up to 25%.
14. Section 1 of the Employment Rights Act 1996 provides that an employer must provide an employee with a written statement of employment particulars not later than two months after the beginning of employment containing the particulars set out in that section and as further described in sections 2 and 3. Section 4(1) provides that if there is a change in any of the matters particulars of which are required by sections 1 to 3, an employer must provide an employee with a written statement containing particulars of the change at the earliest opportunity and in any event not later than one month after the change.
15. Section 38 of the Employment Act 2002 provides that if in a case to which the proceedings relate (which includes proceedings relating to unfair dismissal) the Tribunal finds in favour of an employee and, when the proceedings were begun the employer was in breach of his duty under section 1(1) or 4(1) of the

Employment Rights Act 1996, the Tribunal must, unless there are exceptional circumstances which would make an award or increase unjust or inequitable, award the employee two weeks pay (subject to the cap specified in section 227 of the Employment Rights Act 1995). If the Tribunal considers it just and equitable in all the circumstances, the Tribunal may award four weeks' pay (subject to the cap specified in section 227 of the Employment Rights Act 1996).

Conclusion

16. The Tribunal concludes that, objectively considered, the Respondent breached the implied term of trust and confidence referred to above by the way in which it reduced the Claimant's contracted hours without notice or prior consultation. It is clear from the evidence that the Claimant resigned in response to the breach without delay. Thus, the Claimant was constructively dismissed. The Respondent has failed to show a potentially fair reason for the dismissal which, in the circumstances, was unfair.
17. The basic award is calculated in accordance with the statutory formula provided by section 119 of the Employment Rights Act 1996.
18. The compensatory award is calculated in accordance with the Claimant's schedule of loss which the Tribunal accepts as an accurate calculation.
19. The Respondent failed to deal in any way with the Claimant's written grievance and thus failed to comply with the ACAS Code of Practice. The Tribunal accordingly awards an uplift of 25%.
20. The written statement of employment particulars provided to the Claimant were defective, in particular the name of the employer was incorrectly spelt leading to a confusion as to the correct identity of the Respondent which has now been resolved as set out in the judgement above. The Tribunal awards two weeks' wages.

Employment Judge Pritchard

Date: 9 September 2019