



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Ms V Chetwynd

AND

Respondent

Audio Visual Connections Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT

ON

4 and 5 March 2020

EMPLOYMENT JUDGE GRAY

Representation

For the Claimant:

in person

For the Respondent:

**Mr M Simpson (director and
owner of the Respondent)**

JUDGMENT

The Judgment of the tribunal is that the complaint of constructive unfair dismissal fails and is dismissed.

JUDGMENT having been delivered orally on the 5 March 2020 and written reasons then having been requested on the 16 March 2020 by the Respondent, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In this case the Claimant Ms Chetwynd claims that she has been unfairly constructively dismissed.

2. The Respondent contends that the Claimant resigned, that there was no dismissal, and in any event that its actions were fair and reasonable.
3. The claim form was received on the 14 June 2019. The ACAS early conciliation certificate is from the 28 March 2019 to the 28 April 2019. The Claimant's last day of service was the 25 March 2019, so there is no jurisdictional time / limit issue raised with this claim.
4. For reference at this hearing the parties provided the following:
 - a. A bundle of documents consisting of 104 pages;
 - b. A supplemental set of papers then handed in by the Respondent consisting of an email and a copy of its employment policies (which the Tribunal had to arrange for copies to be made for the Witness table);
 - c. A supplemental 3 pages then handed in by the Claimant, which were extracts from minutes of a meeting on the 6 November 2018 (which the Tribunal had to arrange for copies to be made for the parties and the Witness table).
5. The Employment Judge then explained the hearing process and timetable to the parties, ensuring they also understood the process of questioning witnesses.
6. The Employment Judge then discussed the issues with the parties referring to the Claim form and the Response form. The Claimant confirmed that her complaint of constructive dismissal was about an alleged breach of the implied term of mutual trust and confidence. The issues were then agreed as follows:
7. The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence and she had to resign on the 26 February 2019 with 3 months' notice and a termination date of 20 May 2019. The alleged breaches were as follows;
 - a. Change in the management structure as communicated on the 5 February 2019;
 - b. The meeting on the 22 February 2019; and
 - c. What Ms Hingston said to her on the 25 February 2019;

- d. (The last two of those breaches are what the Claimant submits were the 'last straw' in a series of breaches, as the concept is recognised in law).
8. The Claimant actually left her employment though on the 25 March 2019 and argues that she should be paid the balance of her contractual notice period, for the 2 out of the 3 months that she did not work. The Claimant submits that she was prepared to work for the Respondent during her notice period but could not, she says, because of the toxic atmosphere within the work place which, she says, meant she could not fulfil her work, so had to resign before the expiry of her contractual notice. This matter was discussed with the Claimant with reference to her schedule of loss (a copy of which was in the bundle) as it appeared the Claimant was claiming the same losses twice and the Claimant accepted that what she claims should give account for her earnings from her new employment, which she commenced on the 1 April 2019.
9. Did the Claimant resign because of the alleged breaches? The Respondent says the Claimant did not, and just resigned.
10. In the event that there was a constructive dismissal, was it otherwise fair within the meaning of section 98 (4) of the Employment Rights Act 1996?

11. The Facts

12. I heard from the Claimant and Mr Froud (a former employee at the Respondent) in support of the Claimant. The Claimant confirmed that Mr Froud's statement should only be considered in respect of the paragraphs and content under the heading of the Claimant's name and the rest was not being submitted.
13. I heard from Mr Simpson, who is the director and owner of the Respondent company and Ms Hingston, who is the Account Growth Brand Manager at the Respondent, on behalf of the Respondent.
14. There was a degree of conflict on the evidence. I heard the witnesses give their evidence and observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
15. The Respondent is a company offering design, consultation, supply and installation services to the corporate market for a variety of technological requirements.

16. This is a small company with 6 employees (based on the information provided in the ET 3 Response form).
17. The Claimant was employed as an Office Manager from the 1 December 2016 to the 25 March 2019. A copy of her employment contract is at pages 4 to 12 of the bundle.
18. The Claimant says that she did not have a job description for her role and describes how it was a varied role.
19. Mr Simpson described it as an administrative and clerical role and not a management role.
20. This is a matter of contention. The Claimant says (at para 7)a) of her Statement) that she was Graham's line manager and that she oversaw Ted and Mark prior to the appointment of Ms Hingston. She says that she managed projects alongside Edd, the service desk, the H&S, ISO, purchasing and assisted with accounts where required. I was referred to a chart from a meeting on the 6 November 2018 which the Claimant refers to in support of her assertion that she was senior in the business, but which Mr Simpson explains as being lines of communication rather than a hierarchy.
21. On the 17 December 2018, Ms Hingston joins as Account Growth and Brand Manager. Ms Hingston was then and still is the partner of Mr Simpson.
22. Ms Hingston in oral evidence describes her role to increase new business, deal with client retention and sales pipe line, learn how to use platforms especially team works and the CRM system. On the marketing side it was to look after the brand image of the company and social media markets and other marketing duties. Also, other duties, such as projects when asked to do so.
23. It is confirmed at paragraph 17 of the Claimant's witness statement that Ms Hingston and the Claimant "had different specialisms".
24. The Claimant has identified three things that led to her resignation:
 - a. ***Discovering a change of hierarchy and her exclusion from the 'Management' Group on the 'Teams' Platform.*** The Claimant describes this at paragraph 7)d) of her witness statement "05.02.2019 – During this company meeting a ppt slide was presented, showing a change in company structure, I had been 'demoted' to the lower team to sit below Edd as part of the project team. Both Emily and John's roles were now aligned with Edd, below

Mark. I feel this was the 1st breach in my contract. This change had NOT been communicated to me beforehand and was a clear indication as to why I had been excluded from management meetings since the New Year.”

- b. ***The meeting on the 22 February 2019.*** The Claimant describes this at paragraph 7) g) “22.02.209 – Due to issues with my IT equipment, John visited the office to update my hardware and relocate my desk. Mark reiterated in conversation that morning, that he wanted the office re-structure to be organised between myself, Ed, John and Ross around current diary commitments. John and I arranged for a teams call to be completed on the 25.02.2019 with Edd and Ross. This meeting was not ‘off the cuff’ as claimed, it was a direct instruction from Mark in his email on the 20th. Also today, was the Allsee issue and subsequent informal uncomfortable, unprofessional meeting, where Mark stated he would have to make a decision as to who loses their job, if the situation does not improve. I felt my job was at risk.”

- c. ***What Ms Hingston said to her on the 25 February 2019.*** The Claimant describes this at paragraph 7)h) of her witness statement “25.02.2019 – As ‘Account growth and brand manager’ the task of re-structuring the office did not lend itself to Emily’s role. The excuse given that it was for Emily & John to learn Teamwork was ill-efficient. There was a best practice guide available on the server, the training session to be organised and ‘live’ projects on the software for reference. As the office manager, I felt hurt when Emily firmly told me I would not be involved. I deemed this action to be a further repudiatory breach in my employment contract. If Mark respected me, he would have had the decency to inform me, not allow Emily to do so in the manner which she did.”

25. The Claimant resigned with notice on the 26 February 2019.

26. There is a copy of the resignation letter at pages 73 and 74 of the bundle.

27. The Claimant gives the Respondent 3 months’ notice with a termination date of 20 May 2019. The Claimant says that the decision “is based on the way I feel I have been unfairly treated by you as the CEO of the company and a new colleague over the past 10 weeks. Detailed below are 4 examples where I have agreed to try and move forward, but the situation has not improved. I did not create this situation however; as a result feel undervalued and demoralised in a job I loved and would have continued to do my absolute best in. I would like to see the business become a success as well as the employees who helped build it, however;

1) On 09.01.2019 I had an informal meeting with you, in which I voiced my feelings and concerns in relation to the changes in the company. During this meeting I was told my 'job' had not changed! I received no written review of this discussion but was informed by you on the 22.02.19 during a meeting with 2 other colleagues that 'it made you feel sick'.

2) On 18.01.2019 I attended an informal meeting off site with Emily to clear the air & move forward. I was told in this meeting that I should try and 'get along' with her as I was a woman & to accept the changes or consider my future in the company..... By default on 30.01.2019, to demoralise me further, I learnt that I was not included in the 'Management' Group on the 'Teams' Platform. I highlighted this to you on the 04.02.2019 to be told I was 'never' part of the management team?

3) At my 'Connected Meeting' on 04.02.2019 in which I spoke with you about the above & my general concerns again, I was made to feel like my work had never been appreciated, my feelings and comments were simply brushed aside. A voice recording of this meeting was taken by you on your mobile phone and has yet to be shared with me to date.

4) On 22.02.2019 Following receipt of an email from a colleague, which I felt was unnecessary and replied as such, it was endorsed by yourself as acceptable practice between colleagues. This incident escalated to a meeting in which in all honesty was uncomfortable, personal and biased on several levels. I was told I was negative & territorial by Emily in a way that was unprofessional. Following the meeting it was agreed by all that we would attempt with the passage of time to establish if these issues could be resolved to make both working relationships and work environment more harmonious, the time frame however was not confirmed.

On 25.02.2019 Emily Hingston came over to the work space above the showroom & Informed me that she had offered and by which you accepted for her to 'project manage' the office re-structure and environment. I found this to be in breach of my employment contract as I hold the position of 'Office Manager'. Emily was aggressive & used her personal relationship with you to affirm her position, even to the point of 'goading me' I quote "What you going to do, Verity" several times...."

28. The Claimant in her resignation letter does not ask for the matter to be dealt with as a grievance and as detailed in her witness statement at paragraph 9, she confirms that she did not raise a grievance. She had no intention of retracting her decision to resign. During this hearing the Claimant also

- confirmed that she did not want a grievance progressed with the Respondent.
29. In her Claim form (which the Claimant refers to in her witness statement) the Claimant says that following the meeting on the 22 February 2019 and the incident on the 25 February 2019 she felt “that was the point of no return, my trust and confidence had been breached.”.
30. It is therefore clear on what basis the Claimant says that her contract was breached and why she says she resigned.
31. Considering then the relevant factual background that existed before the Claimant’s alleged “1st breach” (as detailed at paragraph 24 a above).
32. **The meeting of the 9 January 2019.** This meeting is not directly detailed in the Claimant’s witness statement. The Claimant does though refer to it in her resignation letter and in her Claim form (at paragraph 7). The Claim form says (as can be seen at page 98 of the bundle) that when “I explained how I felt to Mark, he became very defensive, when I referred to Emily as ‘his girlfriend’, he actually shouted at me.”.
33. Mr Simpson does refer to this meeting in his witness statement (at paragraph 11) and he says “in an attempt to get to the bottom of her sudden change of behaviour I called an informal meeting with her.... It was in this chat that she first expressed having an issue with Miss Hingston and her relationship with me, saying “its because you’ve employed your girlfriend!... I was extremely surprised to hear this was a problem for her, and sought to reassure Ms Chetwynd that the personal relationship between Miss Hingston and [I] bore no relevance to her appointment”.
34. In cross examination the Claimant accepted that there were 10 working days between Ms Hingston starting and her raising this issue with Mr Simpson. The Claimant was asked a number of times in oral evidence to confirm why employing Ms Hingston was unprofessional. The Claimant said it was because the Respondent was a small company and a small team. The Claimant did not at any time in evidence articulate what she expected Mr Simpson to do about this.
35. In cross examination Mr Simpson said, when asked if he had raised his voice to the Claimant, that he could not recall doing so. He acknowledged that both he and the Claimant were upset, but he didn’t know what to do as he couldn’t not employ his partner.
36. **The meeting on the 18 January 2019.** The Claimant and Ms Hingston in oral evidence accepted that at a meeting between them on the 18 January 2019 they agreed to draw a line and move on.

37. The Claimant submitted though that she did not believe that Ms Hingston did draw a line and move on as Ms Hingston had then raised an issue over the Claimant having taken a copy of Ms Hingston's driving licence when she started, on the Claimant's mobile phone. Further, that Ms Hingston had prepared a document to record how she felt harassed by the Claimant (as can be seen at pages 46 to 47 of the bundle). Ms Hingston confirmed in cross examination that this document was not raised as a formal matter, it was for her to record her position with the company's HR advisers, Citation.
38. **Exclusion from the management team group.** As to the discovery by the Claimant on the 30 January 2019 that she has been excluded from the management team group, and her assertion that this was done to demoralise her further. Mr Simpson confirmed in answer to questions during his oral evidence that it was a conscious decision to form the group the way it was, as leaders of the departments that he had put together, it was more for communication between him, John, Ed and Ms Hingston. This reasoning is also recorded in the investigation findings document at pages 95 to 96 of the bundle. It is noted as a business heads demarcation.
39. **Meeting on the 4 February 2019 between the Claimant and Mr Simpson.** This meeting was recorded so we have a full transcript in the bundle at pages 48 to 57. I was referred to a number of quotes from this meeting, in particular on pages 48, 49, 50, 51, 53, 54, 55 and 57 of the bundle.
40. It is clear from these quotes and the tenor of the meeting notes in general, that the Claimant was expressing her concerns as to how she felt she was less involved in the business since the arrival of Ms Hingston, but that she recognised the need for the business to grow, and that Mr Simpson was offering reassurances to the Claimant. During the meeting Mr Simpson and the Claimant acknowledged that they had a chat about Ms Hingston previously and there is a perception they had cleared the air after that previous chat. The conversation did appear to get more emotional at that part of the meeting and the Claimant is quoted as saying "don't raise your voice" to Mr Simpson (at page 50). The meeting though appears to progress positively after that with the Claimant airing concerns over task management (at page 51) and Mr Simpson addressing those concerns. Mr Simpson is noted as saying to the Claimant that she is valued in her role.
41. **The new structure being announced on the 5 February 2019.** The Claimant submits that she considers this to be a demotion as she is now reporting to Edd, and as detailed above she refers to this as her alleged "1st breach" of contract.

42. The Claimant does not though raise any issue about this formally or informally at that time. Also, as detailed above Mr Simpson confirmed in answer to questions during his oral evidence that it was a conscious decision to form the group the way it was, as leaders of the departments that he had put together, it was more for communication between him, John, Ed and Ms Hingston. Further, the Claimant's concerns about the new structure had been aired between her and Mr Simpson at their meeting on the 4 February 2019. I accept the Respondent's evidence here, in that it was a decision with a business rationale and not, as the Claimant asserts, done just to "demoralise" her.
43. **Email 20 February 2019** (at pages 66 and 67 of the bundle). This is an email to all staff. It deals with parking concerns and does not appear to make any criticism of the Claimant but instead about Mark, another employee.
44. The email also addresses the office move which Mr Simpson explains in his witness statement at paragraph 20 was to address the concerns raised by the Claimant in their one on one on the 4 February 2019. This email does not state that the Claimant is in charge of the office move project. In the email (at page 67 of the bundle) it refers to the office move project needing input from everyone.
45. **Meeting on the 22 February 2019**. From the evidence of Mr Simpson (paragraph 23 of his witness statement) and as set out as part of the investigation findings as detailed at page 91 of the bundle, this meeting appears to have come about because of the need to calm the relationship between the Claimant and Ms Hingston that had escalated during an exchange of emails between them on that day and that were copied to Mr Simpson (the emails are at pages 71 to 72 of the bundle). The relationship issue and subsequent meeting is also referred to by the Claimant at paragraph 7)g) of her witness statement ... "Also today, was the Allsee issue and subsequent informal uncomfortable, unprofessional meeting, where Mark stated he would have to make a decision as to who losses their job, if the situation does not improve. I felt my job was at risk."
46. In oral evidence at this hearing the Claimant accepted that she could express her views in her emails of 22 February 2019. The Claimant confirmed that at the meeting that she recalls Mr Simpson saying to her and Ms Hingston that one of them would have to go if matters could not be resolved. Mr Simpson in oral evidence denied he said this and it was in fact the other attendee, John. What is common fact though is the statement was made and it is directed at both the Claimant and Ms Hingston.
47. **Events of the 25 February 2019**. The Claimant describes what aggrieved her on the 25 February 2019 at paragraph 7)h) of her witness statement ...

- “As the office manager, I felt hurt when Emily firmly told me I would not be involved. I deemed this action to be a further repudiatory breach in my employment contract. If Mark respected me, he would have had the decency to inform me, not allow Emily to do so in the manner which she did”. The issue for the Claimant is therefore what she was told by Ms Hingston, not Mr Simpson, and also the way in which Ms Hingston did it.
48. Mr Simpson denies that he told Ms Hingston to tell the Claimant this and how he describes the situation can be seen in the investigation notes dated 6 March 2019 at page 91 of the bundle.
49. In cross examination Ms Hingston was asked by the Claimant whether on the 25 February 2019 at 5pm she (Ms Hingston) came over to the Claimant’s side of the building with a note book and to take photos, under instruction from Mr Simpson. Ms Hingston stated that Mr Simpson did not ask her, John Beckett did as he was leading it and he asked her to take measurements. Ms Hingston, under cross examination, is therefore consistent with the evidence of Mr Simpson, in that it was not Mr Simpson that asked Ms Hingston to do what she did, which the Claimant then complains about.
50. As there is no evidential basis put forward by the Claimant to challenge what Ms Hingston and Mr Simpson have said in evidence, I accept and find on the balance of probability that Ms Hingston did not do what she did on the afternoon of the 25 February 2019 at the direction of Mr Simpson.
51. **The resignation.** The Claimant then submits her resignation on the 26 February 2019 giving three months’ notice of termination (as detailed above). The Claimant’s resignation is acknowledged by Mr Simpson by email which can be seen at page 75 of the bundle at 09:15 on the 27 February 2019.
52. There is then a letter sent to the Claimant on the 27 February 2019 from Edd Froud which says they will put the Claimant’s resignation on hold while they hear the Claimant’s grievances. As stated above, the Claimant is categorical that she did not want the Respondent to undertake a grievance into the matters she raises. Despite that she does take part and attends a grievance hearing on the 5 March 2019.
53. Before the outcome of any grievance the Claimant’s notice period is brought short by the Claimant (she left on the 25 March 2019) and she submits this happened due to the toxic atmosphere that existed within which she could not fulfil her work.
54. At paragraph 13 of the Claimant’s witness statement she describes why she left on the 25 March 2019, before the expiry of her notice period, as being

because of there being no further outcome. As detailed above, the Claimant in her resignation letter does not ask for the matter to be dealt with as a grievance and as detailed in her witness statement at paragraph 9 she did not raise a grievance. She had no intention of retracting her decision to resign. During this hearing the Claimant confirmed that she did not want a grievance to be dealt with by the Respondent. Further, in her claim form (which the Claimant refers to in her witness statement) the Claimant says that following the meeting on the 22 February and the incident on the 25 February she felt “that was the point of no return, my trust and confidence had been breached.” It therefore seems that any “further outcome”, even if the Claimant had been seeking such, would have made no difference to what the Claimant had decided to do.

55. The Respondent submits that the Claimant left before the expiry of her notice period because she had got a new job (as referred to in paragraph 33 of Mr Simpson’s witness statement).
56. The Claimant confirmed in oral evidence that it was on the 1 March 2019 that she secured an interview for her new job, having applied for that job, she thinks around the 27 February 2019. At paragraph 10 of her witness statement she states she had her job interview on the 4 March 2019. At paragraph 12 of her witness statement she states that it was on the 6 March 2019 that she was offered the job and she accepted it on the 9 March 2019. The Claimant then starts her new employment on the 1 April 2019.
57. It therefore does appear that the Claimant resigned on the 25 March 2019, not due to any act or omission by the Respondent, but to take up her new employment on the 1 April 2019.

58. The Law

59. Having established the above facts, I now apply the law.
60. Under section 95(1)(c) of the Employment Rights Act 1996 (“the Act”), an employee is dismissed if she terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice, by reason of the employer’s conduct.
61. If the Claimant’s resignation can be construed to be a dismissal then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides “... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) 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 – (b) shall be determined in accordance with equity and the substantial merits of the case”.

62. I was not referred to any case authorities by the parties but I have considered the well-established principals in the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA and Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA.
63. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer’s conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”
64. With regard to trust and confidence cases, Dyson LJ summarised the position in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer’s actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the 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: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as “the implied term of trust and confidence”. 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the

breach must: “impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer”.

65. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the “last straw” doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer’s acts notwithstanding a prior affirmation by the employee.
66. The Court in Kaur offered guidance to tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed: (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation? (2) Has he or she affirmed the contract since that act? (3) If not, was that act (or omission) by itself a repudiatory breach of contract? (4) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence? If so, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign. (5) Did the employee resign in response (or partly in response) to that breach?

67. My Decision

68. Ms Hingston started in her role with the Respondent on the 17 December 2018.
69. The Claimant and Ms Hingston undertook different roles at the Respondent.
70. The Claimant early on (as at the 9 January 2019) expressed to Mr Simpson that the issue she had with Ms Hingston was that she was his girlfriend and she viewed this as unprofessional, the Respondent being a small company. The Claimant did not at any time in evidence articulate what she expected Mr Simpson to do about this.
71. In my view it is because the Respondent is a small company that the working relationships between the staff are so important.
72. The Claimant’s concerns as at the 30 January 2019, when she discovered that she has been excluded from the management team group, are shared with Mr Simpson at the meeting between them on the 4 February 2019. Mr Simpson listens to the Claimant’s concerns and offers her reassurance. When the business structure is communicated on the 5 February 2019 the Claimant does not complain informally or formally about it. There does

- appear to be a business rationale for this decision by Mr Simpson and that he did not do it just to “demoralise” the Claimant (as she alleges), particularly in light of what is discussed at the meeting on the 4 February 2019.
73. The proposed office move was implemented to assist the Claimant and the email dated 20 February 2019 does not say the Claimant is in charge of the office move project.
74. The 22 February 2019 meeting is arranged to try and sort the relationship issues between the Claimant and Ms Hingston. It is stated to both the Claimant and Ms Hingston at that meeting that one of them would have to go if matters could not be resolved. This is not an unreasonable position for a company that employs 6 people to adopt, to warn 2 of those employees that if their conflict cannot be resolved it may be necessary to dismiss. Such a dismissal did not happen though.
75. The Claimant in her resignation letter states ... “Following the meeting [on the 22 February 2019] it was agreed by all that we would attempt with the passage of time to establish if these issues could be resolved to make both working relationships and work environment more harmonious, the time frame however was not confirmed.”.
76. The way the Claimant expresses her understanding of the agreement they had all reached following the meeting on the 22 February 2019 in her resignation letter, suggests that it is what happens on the 25 February 2019 that appears to trigger the Claimant’s resignation on the 26 February 2019. The Claimant says about what aggrieved her about events on the 25 February 2019 at paragraph 7)h) of her witness statement “As the office manager, I felt hurt when Emily firmly told me I would not be involved. I deemed this action to be a further repudiatory breach in my employment contract. If Mark respected me, he would have had the decency to inform me, not allow Emily to do so in the manner which she did”. The issue for the Claimant is therefore what she was told by Ms Hingston, not Mr Simpson, and also the way in which Ms Hingston did it. As detailed in my findings of fact, I accept and find on the balance of probability that Ms Hingston did not do what she did on the afternoon of the 25 February 2019 at the direction of Mr Simpson.
77. At paragraph 13 of the Claimant’s witness statement she describes why she then left on the 25 March 2019, before the expiry of her notice period, because of there being no further outcome. As detailed above, the Claimant in her resignation letter does not ask for the matter to be dealt with as a grievance and as detailed in her witness statement at paragraph 9 she did not raise a grievance. She had no intention of retracting her decision to resign. During this hearing the Claimant confirmed that she did not want a

grievance to be dealt with by the Respondent. Further, in her claim form (which the Claimant refers to in her witness statement) the Claimant says that following the meeting on the 22 February and the incident on the 25 February she felt “that was the point of no return, my trust and confidence had been breached.” I have therefore found as a matter of fact that any “further outcome”, even if the Claimant had been seeking such, would have made no difference to what the Claimant had decided to do, so I do not find that the Claimant resigned on the 25 March 2019 because of any act or omission by the Respondent.

78. So, to consider the five questions raised in Kaur:

- a. (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation? ***This is the comments made to her by Ms Hingston on the 25 February 2019.***
- b. (2) Has she affirmed the contract since that act? ***No, the Claimant resigned with notice on the 26 February 2019.***
- c. (3) If not, was that act (or omission) by itself a repudiatory breach of contract? ***I do not find that it was. I have not found the comments by Ms Hingston to be an act by Mr Simpson for and on behalf of the Respondent employer. There are no facts that I have found on the balance of probability, to support that the Respondent employer is guilty of conduct on the 25 February 2019 which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.***
- d. (4) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence? If so, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign. ***Such conduct relied on as constituting the breach must: “impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer”. I do not find, when looked at objectively, that the conduct I have found on the balance of probabilities, to have occurred towards the Claimant, is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in her employer. The Claimant’s concerns about the business structure that she discovers on***

the 30 January 2019 are aired at the meeting between her and Mr Simpson on the 4 February 2019. When the business structure is communicated on the 5 February 2019 the Claimant does not complain informally or formally about it. There does appear to be a business rationale for this decision by Mr Simpson and that he did not do it just to “demoralise” the Claimant, particularly in light of what is discussed at the meeting on the 4 February 2019. The 22 February 2019 meeting is arranged to try and sort the relationship issues between the Claimant and Ms Hingston. It is stated to both the Claimant and Ms Hingston at that meeting that one of them would have to go if matters could not be resolved. This is not an unreasonable position for a company that employs 6 people to adopt, to warn 2 of those employees that if their conflict cannot be resolved it may be necessary to dismiss.

- e. (5) Did the employee resign in response (or partly in response) to that breach? ***I have not found there to be a breach of contract, which the Claimant resigned in response to on the 26 February 2019, further, the subsequent earlier termination of her notice period (on the 25 March 2019) appears to be to take up new employment on the 1 April 2019, because, although the Claimant says she was not prepared to wait for any further outcome on her matter, she had not actually been seeking any further outcome on her matter.***

79. For these reasons the Judgment of the tribunal is that the complaint of constructive unfair dismissal fails and is dismissed.

80. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 7 to 10; the findings of fact made in relation to those issues are at paragraphs 12 to 57; a concise identification of the relevant law is at paragraphs 59 to 66; how that law has been applied to those findings in order to decide the issues is at paragraphs 68 to 79.

Case No. 1402612/2019

Employment Judge Gray

Dated: 17 April 2020

Judgment sent to parties: 21 April 2020

FOR THE TRIBUNAL OFFICE