



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Sabau

Respondent: Jon Adam Ltd

Heard at: London Central

On: 6 and 7 August 2019

Before: Employment Judge Grewal

Representation

Claimant: Ms M Cornaglia, Counsel

Respondent: Mr M Sellwood, Counsel

JUDGMENT having been sent to the parties on 7 August 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1 Although the Claimant first asked for written reasons on 12 August 2019, and pursued it a few times thereafter, the first time that it was referred to me was on 4 June 2021. The delay in providing these reasons is due to administrative failures at the Tribunal, for which I apologise. In my oral reasons, I quoted from some of the documents in the bundle before me. I no longer have the bundle and can do no more than give the page numbers for the documents to which I referred.

2 The complaints before me were of constructive unfair dismissal and wrongful dismissal. I had regards to section 95(1)(c) of the Employment Rights Acts 1996, the authorities on the breach of the implied term of trust and confidence and the authorities to which the parties referred.

The Evidence

3 The Claimant and the following witnesses gave evidence in support of her claim – Vijayakumar Rengalwar and Peppa Grama (former employees of the Respondent). The following witnesses gave evidence on behalf of the Respondent – Ron Knight (Finance Director) and Terri Attygale (Production

Manager, Ladieswear and Childrenswear). I also had before me a bundle of documents. Having considered all the oral and documentary evidence I made the following findings of fact.

Findings of fact

4 The Respondent is a manufacturer of clothing for high street retailers in the UK and in Europe.

5 In 2009 the Claimant worked for the Respondent for a few months after her employment transferred to the Respondent from another employer in April 2009 when the Respondent took over that business. She left in November 2009. At that time she was employed as a Fabric Co-Ordinator.

6 On 10 May 2010 the Claimant commenced employment with the Respondent as a Pre-Production Assistant in the childrenswear department. On 10 May Ron Knight, the Respondent's Finance Director, who dealt with HR issues at the Respondent, sent the Claimant an offer letter and a contract of employment at the address where she then lived. She was asked to sign the contract and to return it within 7 days. A signed copy was not returned. I found that it was very likely that the Claimant received both those documents at the time that they were sent to her.

7 I quoted clauses 1, 10 and 13 of the contract of employment (at pages 61, 63 and 64 of the Bundle).

8 Everyone at the Respondent, including the Claimant, knew that Mr Knight was responsible for HR matters and all complaints and queries related to wages, work relations and annual leave were raised with him.

9 Pre-production Assistants were responsible for ordering and approving (on arrival) materials and component parts that would be used during the manufacturing process of a particular garment. These materials included fabrics, labels, lining and hangers. Most of the Pre-Production Assistants were responsible for ordering a number of these items. In the first two years of her employment the Claimant ordered only fabrics and hangers for the childrenswear department. Later she was asked to order lining as well. Initially, she refused to do so but later agreed to it and in the last year or two of her employment she ordered fabrics and lining.

10 Account Managers worked alongside Pre-Production Assistants and they were responsible for the management of the entire production process from beginning to end for particular accounts.

11 In relation to each order a docket has to be raised. This entails going on the Respondent's computer system (called Fashion Partner) to check whether all of the relevant materials needed to manufacture a particular garment have arrived. If they have, the individual clicks a button and the system generates a docket. The docket is a spreadsheet which tells the manufacturer everything that it needs to know in order to manufacture a particular garment, such as how many garments, in what sizes, with what materials, when delivery is required. The docket is then sent to manufacturer along with all the materials.

12 Vijay Rengalwar worked for the Respondent as a Production Co-Ordinator from 2009 until December 2013 when he moved to India. In May 2014 he began working for Respondent as a Production Assistant while based in India. His duties were to order labels and hangers and to raise dockets for the childrenswear department. These were different duties from the ones had carried out in London. In 2015 he was given additional duties to order labels and hangers for some customers of ladieswear. By June 2018 70% of his work was for the childrenswear department and 30% for the ladieswear department.

13 In the first half of 2018 the turnover of the childrenswear department was considerably lower than that of the same period in the previous year. The gross sales were down from about £4 million to about £2.73 million, a reduction of a little over 30%. The reason for the decrease in turnover was a reduction in the number of orders being placed. In May 2018 7 orders (for 7 different styles) were placed and June 2018 17 orders (for 17 different) were placed. For each style there would be one order for labels and hangers. Therefore, in May there would have been 7 orders for hangers and labels. Normally, there would be one order for fabric unless an item involved two pieces.

14 As a result there was a considerable reduction of work in the childrenswear department and in the workload of both the Claimant and Mr Rengalwar. Due to the reduction a key sales person in the department resigned and there was not sufficient work to keep the Claimant and Mr Rengalwar fully occupied. The Claimant's duties did not take up her full working hours, a fact which was acknowledged in her letter of 24 July and in her particulars of claim. She tried in her evidence to renege from that but I am satisfied that her work had reduced and she knew and recognised that. Her attendance records do not prove otherwise. All they prove is that she attended the office for the hours that she was contractually bound to attend. She sometimes arrived early. That was not because she had a lot of work to do and needed to work extra hours but because it was the time when she could make phone calls to suppliers in other parts of the world because of the time difference.

15 The Respondent decided to re-organise the business in order to deal with the reduction in work in the childrenswear department and to merge the childrenswear and ladieswear departments. Gary Gold (Managing Director) and Terri Attygale (Production Manager for ladieswear and childrenswear) decided that they no longer needed Mr Rengalwar to carry out the role he had been carrying out in India and that his duties could be carried out by the Pre-Production Assistants in London.

16 They both felt that due to the fact that the Claimant's only duty was to order fabric and lining for the childrenswear department and the work in the childrenswear department had decreased, she had the most capacity of all the Pre-Production Assistants to take on additional duties. Furthermore, as she was ordering the fabric for the childrenswear department it made more sense for her to order the other materials for that department than for someone else in a different department. They decided, therefore, that she would be asked to take over Mr Rengalwar's duties relating to the childrenswear department. They were satisfied that she had the capacity and the capability to do so.

17 The additional duties did not require a particular skill-set or knowledge. They were all tasks carried out by the Pre-Production Assistants. The Pre-Production

Assistant role is not a specialist role and it included the ordering of all the component parts. Clearly if a Pre-Production Assistant had not ordered a particular component before, he or she would need to be shown what it entailed, and once that was done there was no intrinsic reason why he or she could not do that. Equally, if someone had never raised dockets before they would need to be shown what it entailed. The tasks were not inherently complex and because of the reduction in the orders they were not going to be time-consuming.

18 On 16 July Mr Gold and David Little (the Claimant's line manager) met with the Claimant. Terri Attygale joined the meeting after it had started. Mr Gold explained the situation to the Claimant about the reduction of orders and the decrease in the sales figures. He said that the Respondent had decided to dispense with Mr Rengalwar's services and that they wanted the Claimant to take over his duties in the childrenswear department. Both sides understood that to mean his duties in respect of ordering labels and hangers and the raising of dockets. I do not accept that what Mr Knight and Ms Attygale said in their original witness statements was a mistake. I do not think that it is credible that they both made the same mistake and that they both read and signed their statements and did not notice that mistake.

19 He asked the Claimant to let him know within two days whether she was prepared to do that. He did not tell her, as the Claimant alleges, that Mr Rengalwar was going to be sacked immediately and that she was expected to start doing all his duties in two days' time. It is clear from what happened afterwards that that is not how the Respondent ever intended to handle this change, nor would it make any sense to do that. It was recognised that the Claimant would have to be shown how to do some aspects of his role and it would take a little time before she was up and running. At the meeting the Claimant indicated that she was prepared to take on his duties but she would need to be trained in ordering labels because she had not done that before.

20 However, when she left the meeting with Mr Little and Ms Attygale she told them that she did not want to take on the additional duties. Ms Attygale told her to think about it and suggested that she give it a go and see how it went. She assured her that she would be provided with all the support and training that she needed.

21 The following day the Claimant spoke to Attygale about it. She said that she had had a long and sleepless night. She had given it a lot of thought but she was afraid to take on the additional duties because she did not know how to do them and she wd make mistakes. Ms Attygale told her not to be concerned; they would guide her and give her any training she required. The Claimant mentioned that she was thinking of resigning. Ms Attygale asked her to think about it and urged her to give it a try and emphasised that they would support her. The Claimant asked her how much notice she would have to give if she resigned and Ms Attygale said that she did not know but it was normally a month's notice. The Claimant asked her what she needed to say in a resignation letter and Ms Attygale found her a template on Google and showed it to her.

22 Later that day the Claimant handed her resignation letter to Mr Knight. She said that she felt that she had not had any option but to resign. Mr Knight said that he was sorry that she felt that. I referred to the content of the Claimant's resignation letter at page 101 in the Bundle.

23 Following the Claimant's resignation, her duties were shared out among some of her colleagues.

24 On 24 April the Claimant gave Mr Knight a letter. I referred to the contents of that letter which was at page 103 of the Bundle. Mr Knight met with the Claimant later that day to discuss her letter. There is a note at page 102 that refers to that discussion.

25 The Claimant worked her notice period. She did not at any stage try to retract her resignation.

26 The Claimant's employment terminated on 14 August.

27 On 28 September Mr Knight called Mr Rengalwar to say he was being released from his duties with immediate effect. Mr Rengalwar said that there were a number of ongoing matters he wanted to conclude and asked that he be allowed to continue for a month. He was allowed to do so and the Respondent dispensed with his services in October. His duties in respect of ordering labels and hangers for childrenswear were given to one colleague and his duties in respect of raising docketts were given to Mr Hills who raised docketts for ladieswear. In that role he was already raising 50-60 docketts a week.

Conclusions

28 I first considered whether asking the Claimant to take on Mr Rengalwar's duties relating to childrenswear was a breach of an express term of the Claimant's contract. The Claimant was employed as a Pre-Production Assistant. That was generic role that covered a number of duties. The Pre-Production Assistants employed by the Respondent carried out a mixture of those duties. They were all expected to carry out any of those duties. The Claimant had ordered hangers in the past. The duties she was being asked to take over were duties that Mr Rengalwar had carried out as a Production Assistant. She was not being asked to do anything outside her contract. Even if any of duties which the Claimant was being asked to do was outside the remit of a Pre-Production Assistant's duties, clause 1 of the contract would have required the Claimant to do them.

29 I also do not accept that by being asked to carry out those duties the Claimant was being asked to work more than her contractual hours or to take on the full-time work of two employees. The work of both the Claimant and Mr Rengalwar had reduced considerably. Neither of them had sufficient work to work to keep them occupied for 37.5 hours a week. The Claimant could carry out her and his duties within her contractual hours.

30 I then considered whether there had been a breach of the implied terms of trust and confidence. There were a number of facts asserted by the Claimant which I have not found to be the case. Those things did not happen. The Claimant was not told that Vijay was going to be sacked immediately and that she was expected to be carrying out all his duties within two days. It was made clear to her that she would be given support and training and that she would be shown how to do those aspects of the job with which she was not familiar. I accept that the Claimant was worried about doing things that she had not done

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before. That is natural; she was not in her comfort zone doing something with which she was not familiar. But the tasks were not inherently difficult and did not require a special skill-set. She was a capable employee who would have known what to do once she was shown what to do. The Respondent was a flexible employer and was prepared to support and help her. If she had tried it and found any aspect difficult, the matter could have been discussed and resolved. The problem was that the Claimant had a closed mind to it and was not prepared to try it. I found that there was no breach of the implied term of trust and confidence. The Respondent did not conduct itself in a manner that, objectively viewed, was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

Employment Judge - Grewal

Date: 11th June 2021

REASONS SENT TO THE PARTIES ON

11/06/2021..

FOR THE TRIBUNAL OFFICE