



EMPLOYMENT TRIBUNALS

Claimant: Mrs Charles Paget

Respondent: Wrexham County Borough Council

Heard at: Cardiff **On:** 26,27,28,29, 30 July 2021

Before: Employment Judge Ward, Mr Horne and Mrs Humphries

Representation:

Claimant: In person

Respondent: Mr McNerney (Counsel)

JUDGMENT

1. The claim is dismissed.
2. The claim for constructive dismissal and disability discrimination fails.

REASONS

The issues and applicable law

1. The claimant contends that she was constructively dismissed and forced to resign on 30 January 202. She also claims disability discrimination in relation to a failure by the respondent to make reasonable adjustments.
2. In accordance with s95(1) (c) of the Employment Rights Act 1996 a person is dismissed if the employee terminates the contract under which she is employed (without or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employers conduct.
3. In accordance with the s 20 and 21 of the Equality Act 2010 a person discriminates against a disabled person if they fail to comply with the duty to make reasonable adjustments.

4. Further to EJ Vernon directions from the case management hearing on 2 October 2020 and as set out at the start of the hearing on 26 July, the following issues were for the tribunal to determine;

Constructive dismissal

Was the Claimant dismissed?

Did the Respondent do the following things:

- fail to provide policies, procedures and a job description in respect of a new role which the claimant was required to undertake;
- fail to follow its own supervision policy in respect of the Claimant;
- fail to offer or undertake stress risk assessments in respect of the claimant and the work required of her;
- reduce the claimant's pay to Statutory Sick Pay without notifying the claimant;
- and fail to properly manage or determine a grievance raised by the claimant.

Did that breach the implied term of trust and confidence?

The Tribunal will need to decide: whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and whether it had reasonable and proper cause for doing so.

Did that breach an express term of the contract?

Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.

Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

If the Claimant was dismissed, what was the reason or principal reason for dismissal?

Was it a potentially fair reason?

Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

Reasonable Adjustments

Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

- Requiring the Claimant to undertake a new role following the merger of two departments.

Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability?

- Increased stress and anxiety as a result of her disability resulting ultimately in her being unable to continue in her role;

Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

What steps could have been taken to avoid the disadvantage? The Claimant suggests:

- put in place clear policies and procedures in respect of her new role;
- conducted a stress risk assessment in respect of the new role;
- issued a job description in respect of the new role;
- and provided the Claimant with support.

Was it reasonable for the Respondent to have to take those steps [and when]?

Did the Respondent fail to take those steps?

The evidence

5. The Tribunal heard evidence from the claimant and her witness Ms Murphy a former colleague and assistant team manager. The Respondent submitted 5 witness statements and the Tribunal heard evidence from Ms Annette Green the claimants line manager, Ms Charlotte Walton the former chief officer, who heard the claimants grievance, Ms Alison Griffiths HR advisor for the grievance and Mr Mark Owen the former Chief Finance officer who heard the claimants grievance appeal. Mr Mark Jones statements was read by the Tribunal with no objection from the claimant but did not attend the tribunal as he has sadly passed away.

6. A bundle of 521 pages was submitted and following late disclosure by the Respondent during the claimants evidence, which should have been dealt with prior to the case starting, the tribunal admitted further documents at B98, 99 and 100.

The relevant facts

7. The claimant was employed as an assistant team manager (ATM) in the adult social care department in the council. She had worked in the department for 11 years and worked her way up to a managerial position which she undertook temporarily and then was successful in obtaining the post permanently. She clearly loved her second career and is a passionate advocate for social work.
8. The role involved supervision of social workers working at HMP Berwin and in the initial response team (IRT) undertaking her own case work and allocation of referrals.
9. The claimant suffers from PTSD, clinical depression, stress and anxiety which she manages day to day. The respondent concedes that she is a disabled person under the Equality Act 2010.
10. The claimants team all worked in the office with her line manager Ms Green in the adjacent office. Clearly Mrs Green meet frequently with the claimant in supervising and supporting her in her work and development but formal supervision if it happened, was not always recorded.
11. Following a return to work from sick leave on 13 May 2019 supervision occurred on 14 June 19, 16 July 19 and 20 September 19. There are no other recorded sessions. It is good practice for supervision to be monthly.
12. The Adult Social Care Department was undergoing a transformation journey and on 30 September 2020 a new procedure was introduced called SPOA (single point of access). The vision for this new process was for all social care referrals to be considered in a central inbox and then triaged and referred to the correct social care department.
13. The introduction of the SPOA system changed the way the claimant undertook her role but did not change the duties of an ATM to the extent that would require a new job description. The IRT inbox was deleted but that doesn't mean that the job changed. There was no change to the structure of the department, the same management team remained in place with no new roles or restructure. It is clear that the claimant strongly disagrees with this as the impact on the new referral system had such an impact on her and her team. All adult social care referrals were now in the SPOA inbox. This increased the volume (some 30 referrals a day increasing to 100) and type of referrals.

14. It is clear that the preparation for this introduction had not been fully thought through, although there was circulated a 3 page guide, which the claimant assisted in producing, this wasn't effective. With the introduction of the new system came more questions than answers and an increasing workload for all who were trying to implement this new way of working. The situation was chaotic, ever changing and was frustrated by mixed messages between teams. It was a very difficult time and the claimant was clearly experiencing extreme stress due to the lack of a structure referral system.
15. On 3 October a message is sent, though the tribunal has not seen the actual message but it is referred to in other correspondence in the bundle, trying to assist and advising that ATM's did not have to pre screen all referrals.
16. By the 9 October 2019 everyone in the office was finding it incredibly difficult and Ms Green advised all officers in the morning by email that they had "reached crisis point" [B16]. The claimant's difficulty to cope was exasperated by her disability to the extent that she sent an email to Ms green stating that her mental health "was off the wall" [B12]. There was no assessment by way of a formal risk assessment or otherwise of the impact this was having on the claimant as a disabled worker. Ms Green did discuss stress risk assessments with her manger Mr Jones but no further action was taken.
17. On 31 October Ms Greens manager Mr Jones sends an email to the officers putting in steps to try and mitigate the situation. The claimant does not find this helpful however and has more questions. Mr Jones tried to resolve the situation but the situation on the floor was more complicated. The claimant continued to screen the inbox as she clearly felt there were risks in not doing so, with the knowledge of her line manager.
18. The claimant continues to work, but is still very concerned, the number of referrals in the inbox has increased and there is a back log. In early November the claimant says to Ms Green that she wants to speak to the Director Ms Walton. The claimant says that Ms Green said in response to this "on your head be it." Ms Green denied saying this in her witness statement but in cross examination said she honestly had no recollection of saying it. Ms Murphy heard her say it and the claimant has been consistent in referring to these words being said.
19. The Tribunal is of the view that Ms Green did make this statement and was not supportive of the claimant in seeking help from the Director. In evidence Ms Green said she was aware as a result of the email on 4 November that clearly something wasn't quite right with the claimant but didn't take any additional steps to address this. She said this was because another email from the claimant later in the day wasn't in the same tone. This was an oversight to the claimant detriment.

20. On a date around 11 November the claimant commences sick leave and submits a grievance on 6 December [B70]. The grievance is considered by Ms Walton who provided the claimant with options after acknowledging that some of the changes implemented in SPOA were premature and the resources required were not in place and that communication within the team and with other teams within Adult Social Care was not as clear as it could have been. The claimant sick pay is reduced during her absence without notification from HR. This is apologised for in the grievance and the shortfall is paid back to her, exceptionally Ms Griffiths explained due to the lack of prior notice.
21. Eventually on 25 November the claimant is advised by Ms Green that new policies and procedures are to be written by a colleague Pauline Best [B1].
22. Ms Walton sets out options in an email on 9 January 2021 [B74] and before a formal response to the grievance is received, the claimant advises Ms Walton that she is resigning.
23. It is clear that the claimant was considering her options in November when she says “she can’t see a way back from here” [B1]. Although the conversation to join the new business may have been very close to her resignation. It is clear that the claimant left her employment due to her experience with the SPOA introduction and how it was handled and not the establishment of Dragon Dinners with Ms Murphy. The claimant was clearly distressed by the way the system was being implemented and found no additional support was forthcoming from Ms Green than was available to other members of staff.
24. The claimant appealed the grievance on 30 January [B80] and an appeal hearing was held with Mr Owen on 5 March. He upheld Ms Walton's grievance findings and confirmed this to the claimant on 6 March [B87].

Conclusions

Constructive dismissal

25. It was never suggested that the breaches asserted by the claimant were breaches of any express term in her contract of employment.
26. The Tribunal therefore had to consider whether there had been a breach of the implied term of trust and confidence.
27. The claimant relies on the failure to provide policies, procedures and a job description in respect of a new role which the claimant was required to undertake; fail to follow its own supervision policy in respect of the Claimant; fail to offer or undertake stress risk assessments in respect of the claimant and the work required of her; reduce the claimant's pay to Statutory Sick Pay

without notifying the claimant; and fail to properly manage or determine a grievance raised by the claimant and the Tribunal dealt with these in turn.

28. On the failure to provide guidance and policies the Tribunal finds that what was in place wasn't effective and that clearly the new system had significant problems. The Tribunal does not consider that a new job description was required. Formal supervision wasn't consistent but in the period that this claim relates 3 out of the 5 months formal recorded supervision takes place. A stress risk assessment wasn't undertaken though the claimant didn't know of these prior to resigning. The claimant did receive half pay during her last period of sickness without prior warning, this was remedied and an apology given. The grievance procedure was followed appropriately.
29. It is clear that the claimant resigned due to her experience at work and not to commence the business Dragon Dinners with Ms Murphy. However the Tribunal has to consider if the claimant was dismissed? This is whether she is entitled to terminate her employment by reason of the employer's conduct. This requires the Tribunal to consider the facts of what happened and whether the conduct is so fundamental to destroy the relationship of trust and confidence that exists between and employee and employer. The Tribunal do not consider the respondents failures singly or cumulatively amount to a fundamental breach of trust and confidence.

Reasonable Adjustments

30. A reasonable adjustment claim requires the tribunal to first consider the provision, criterion or practice (PCP).
31. In this case (further to the issues identified by EJ Vernon at the case management hearing on 2 October 2020) the Tribunal was required to consider if the respondent required the Claimant to undertake a new role following the merger of two departments.
32. The Tribunal did not find this practice to be in place. The Tribunal considered if there were other practices but reminded itself of the EAT decision in **Secretary of State for Justice v Prospero [2015]** where a Tribunal was in error and subject to a successful appeal, where it decided the claim not based on the PCP identified in the list of issues.

Employment Judge Ward
Dated: 2 August 2021

REASONS SENT TO THE PARTIES ON 2 August 2021

.....
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche