



THE EMPLOYMENT TRIBUNALS

Claimant: LORRAINE KERR
Respondent: NORTH TYNESIDE COUNCIL
Heard at: NEWCASTLE UPON TYNE CIVIL AND FAMILY
TRIBUNAL CENTRE
On: MONDAY 25 APRIL 2022
Before: Employment Judge RODGER (sitting alone)

Representation:

Claimant: In Person
Respondent: TIM WILKINSON (Counsel)

JUDGMENT

The Claimant's claim of unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant Mrs Lorraine Kerr was employed by North Tyneside Council as a Housing Officer from 20 June 2018 to 13 August 2021 when she resigned. Her resignation, claims Mrs Kerr, was the culmination of a series of events beginning with a hostile meeting on

10 December 2020 between her and her managers after which she went off work on sickness leave and did not ever return. By this claim she seeks damages for constructive dismissal.

2. For its part, the Council contends that there was no breach of contract capable of founding the constructive dismissal claim and, if it is wrong about that, Mrs Kerr did not accept any repudiation but rather affirmed the continued existence of her employment contract.
3. Mrs Kerr represented herself. I am grateful to her for the clear and thoughtful way in which she presented her case. The Council was represented by Mr Tim Wilkinson of Counsel.
4. This is a sad case. Mrs Kerr has approximately 45 years' experience in social work and it was clear to me that she is thoroughly professional in her work and passionate about that professionalism. She sets high standards of herself and expects the same standards of others. She told me and I accept that it was her wish to stay on in this valuable work well beyond the normal retirement age. Undoubtedly the loss of Mrs Kerr from the public service is a serious and disappointing loss indeed. It is also clear beyond doubt that this episode has caused considerable distress to Mrs Kerr. It has made her so ill that she is unable to work.

Issues

5. The issues in this case are simple straight forward. They are whether the Council breached the implied term of mutual trusts and confidence that is found in its employment contract with Mrs Kerr and, if so, whether Mrs Kerr nonetheless affirmed that contract.

Evidence

6. There were few factual disputes between the parties. I heard evidence from Mrs Kerr herself and from the Council's Susan Redpath, Pamela Hill, Ellie Anderson and Kath Alexander. There is also an extensive bundle of documents running to 503 pages including the witness statements. In making my decision I took into account all of the documents to which my attention was drawn. There were two anonymised character references which Mrs Kerr asked me to rely upon. Given they are not mentioned in the evidence, the makers of those references were not called to give evidence and are not named, I feel unable to do so although I have little doubt that they are authentic and true.

7. I have no doubt that Mrs Kerr was doing her best to help me and is an honest witness. She has a strong personality and gave evidence with confidence. She had no hesitation about expressing herself and was capable of sticking up for herself and fighting her corner under cross-examination. Indeed, I would go so far as to say she was not without some belligerence. However, she did not answer straight forward questions straight forwardly: her oral evidence was characterised by long answers mainly concerned with her feelings rather than the Council's actions and omissions. I also found her to be less than clear about her complaints to the extent that it was difficult to make out what her case actually was. The Council's witnesses also struck me as honest witnesses doing their best to help me. They gave evidence clearly and straight forwardly. For these reasons, in so far as there was any factual dispute between the parties, I preferred the evidence of the Council's witnesses to that of Mrs Kerr but, I must stress, this is not a case characterised by factual dispute.

Findings of fact

8. These are the facts as I find them to be.
9. On 10 December 2020 there was a Teams meeting attended by Mrs Kerr, Linda Herman and Anthony Howe, respectively the Services Manager and Team Leader relevant to Mrs Kerr. Although she was not expecting Mr Howe to be present in the meeting, Mrs Kerr had in fact been notified in advance that he would be. The business of the meeting was contentious: it was to deal with Mrs Kerr's performance generally and in particular to address some criticisms of her availability.^b The meeting became heated and exasperated on both sides. Mrs Kerr would not accept any criticism from Mrs Herman and Mrs Herman for her part would not accept Mrs Kerr's explanations. Mr Howe was left somewhat stuck in the middle between the two.
10. Subsequently, Mr Howe telephoned Mrs Kerr to encourage her to come into work to take part in a one-to-one meeting. He intended to encourage and to support Mrs Kerr but his call was not taken that way by her: she perceived Mr Howe as threatening her and so the parties' positions became entrenched.
11. On 22 December 2020, acting through her union representative, Mrs Kerr submitted a grievance about the meeting on 10 December. The union representative suggested that the Council come back to her after Christmas and, indeed, on 4 January 2021 the Council did so. At some time between 7 and 11 January 2021 there was a conversation between the union representative and the relevant person at the Council but otherwise there was no contact, direct or indirect, between the Council and Mrs Kerr from 22 December 2020 to 4 January 2021.

12. In the course of the conversation between the union representative and the Council which took place between 7 and 11 January 2021, the Council asked whether Mrs Kerr wished her grievance to be dealt with formal or informally. On 11 January 2021, after having spoken to Mrs Kerr, the union representative confirmed that she wished it to be dealt with formally under the Council's grievance procedure.
13. The Council duly investigated pursuant to its procedure. On 24 February 2021, it held a grievance meeting with Mrs Kerr. On 2 March 2021, it interviewed Mrs Herman; on 3 March 2021, it interviewed Mr Howe; and on 9 March it interviewed Mrs Redpath. On 10 March 2021, the Council wrote to Mrs Kerr declining to uphold her grievance and giving reasons why.
14. On 22 April 2021, Mrs Kerr lodged an appeal. That appeal was out of time but the Council entertained it nonetheless. There was an appeal hearing on 7 May 2021. Mrs Kerr's appeal was dismissed and that dismissal was communicated to her by letter dated 18 June 2021.
15. In mid-July 2021, there were three telephone conversations between Mrs Kerr and Mrs Redpath about the possibility of Mrs Kerr's return to work. In the course of those conversations, the council was entirely supportive and offered Mrs Kerr complete flexibility about how she might come back to work for it. Mrs Redpath stressed that Mrs Kerr was valued by her colleagues; but she also offered the possibility of Mrs Kerr coming back to work in a different role.
16. At all times between 10 December 2020 and her resignation on 13 August 2021, Mrs Kerr took sick pay. She also received counselling provided to her by the Council and between March and July 2021 she engaged with the Council's occupational health team.
17. As noted, on 13 August 2021, Mrs Kerr resigned.

18. A constructive dismissal occurs where the employee resigns in response to conduct by the employer that amounts to a repudiatory breach of contract. There are two main issues that I have to decide. The first is whether there was a breach of the implied term of mutual trust and confidence. Only if I am satisfied that there was such a breach does the second issue arise. Then I have to decide whether notwithstanding the breach, Mrs Kerr affirmed the contract.

Discussion

19. Mrs Kerr points out seven facts which individually or cumulatively amount to a breach of the implied term. These are:
- (1) the fact of the meeting on 10 December 2020;
 - (2) the attendance at that meeting of both Linda Herman and Anthony Howe (when she had expected only Mrs Herman);
 - (3) the failure of the Council to take minutes at that meeting;
 - (4) the contents of Mr Howe's phone call to her on 14 December 2020;
 - (5) the failure of the Council to make contact with her over Christmas and New Year 2020;
 - (6) the Council's question to her—through her union representative—as to whether she wished her grievance to be dealt with formally or informally; and
 - (7) the three conversations with Mrs Redpath in July 2021.
20. Mrs Kerr explained to me that the 10 December meeting felt planned. She was told that Mr Howe was present as a witness. She was aggrieved that no minutes were kept. More than anything else, she

considered Mrs Herman's conduct to be so serious—and Mr Howe's failure to do anything about it also—as to amount to a breach. She explained that after that meeting she felt there was a change. She felt quite vulnerable. She felt bullied.

21. At the other end of the time period, Mrs Kerr told me that the conversations she had with Mrs Redpath in July 2021 felt like lip service, that Mrs Redpath was not genuine to her. Mrs Kerr had lost trust in the Council.
22. On behalf of the Council, Mr Wilkinson submitted that the while the meeting on 10 December 2020 had escalated perhaps more than it should have done and while it ought to have been de-escalated, that was a long way short of bullying. He reminded me that Mrs Kerr had given as good as she got and accepted in evidence that she had been assertive and had spoken over Mrs Herman. He submitted that there was npc ground for complaint about the absence of minutes and the presence of both Mr Howe and Mrs Herman in the meeting.
23. As to the 14 December 2020 phone call, Mr Wilkinson submitted that the Tribunal must look beyond Mrs Kerr's perception: on an objective analysis, the call was intended to help Mrs Kerr, not to threaten her.
24. As to the absence of contact over the Christmas period, Mr Wilkinson submitted that this was unremarkable given it was the Christmas period, given that Mrs Kerr had submitted her grievance through her union representative and given that the union representative had stated that she would be available in the new year.
25. Mr Wilkinson submitted there was nothing inappropriate about the Council's request made through the union as to how Mrs Kerr wished the grievance to be dealt with.

26. Finally, as to the conversations between Mrs Kerr and Mrs Redpath in July 2021, Mr Wilkinson submitted that while there may have been a focus on getting Ms Kerr back to work, that was wholly appropriate and it concurred with Mrs Kerr's own wishes. He submitted that the Council went above and beyond its duty and was true and supportive of Mrs Kerr. No pressure was applied and there was no rushing Mrs Kerr back to work.

Conclusions

27. It is clear to me that the conduct of both Mrs Kerr and Mrs Herman in the meeting of 10 December 2020 was regrettable. That meeting became heated, with neither side heeding the other. I do not think that in itself amounts to any breach of the implied term as to trust and confidence. The workplace must be a robust place in which it is possible for parties to disagree, even vehemently. While I accept that both women were aggressive each towards the other, that both sought to speak over the other, and that to an extent both ceased listening to the other, I have not heard any evidence of any conduct on either side that was beyond the pale. That meeting involved Mrs Herman challenging Mrs Kerr about her performance in a way which was bound to cause discomfort, legitimately so, but there is no evidence on which I could conclude such challenge in itself was illegitimate or was made in abusive or foul or unacceptable terms. I accept what Mrs Kerr tells me about her feelings during and after that meeting, but her subjective feelings are not decisive of the matter.
28. I agree with Mr Wilkinson that the presence of Mr Howe in that meeting and the failure of either Mrs Herman or Mr Howe to keep minutes are unremarkable. At no time did I understand the basis on which Mrs Kerr objected to these matters. Neither in themselves nor

in combination with any other fact in this case are they capable of amounting to a breach.

29. I also see no basis for finding that Mr Howe's telephone call to Mrs Kerr on 14 December 2020 was in any way inappropriate. I have heard no evidence at all now which it could be concluded that Mr Howe was threatening Mrs Kerr or otherwise abusing her. It seems to me that he was trying to sort things out positively and with encouragement. This is no breach either individually or in combination with any other factor.
30. Further, I see no basis for any complaint about the Council's failure to contact Mrs Kerr over the Christmas holidays. Mrs Kerr did not articulate to me why the Council should have contacted her. Indeed, given she was on sickness leave and given it was the Christmas period, I would not expect the Council to contact her at all. Moreover, Mrs Kerr by then had lodged her grievance, now acting through her union representative, which representative had suggested she would not be available to deal with the matter until the new year. Again, this is no breach either individually or in combination with any other factor.
31. Similarly, the Council's request of Mrs Kerr, made through her union representative, as to whether she wished the grievance to be dealt with formally or informally was wholly appropriate. Mrs Kerr's request that it be dealt with formally was respected. There is no breach here.
32. Finally, I do not accept that Mrs Kerr's subjective feelings about Mrs Redpath's sincerity in the course of the three telephone calls they had in July 2021 are in any way indicative of a breach by any objective measure. I am satisfied that Mrs Redpath's intentions were wholly genuine and were focussed on supporting Mrs Kerr in her return to work. I can see no proper reason why Mrs Kerr should think

otherwise, but that she did think otherwise does not give rise to a breach where there is in fact none. It seems to me that the Council bent over backwards to accommodate Mrs Kerr.

33. In my judgment, there is no evidence of any breach by the Council.
34. Even if I were to be wrong about that, I would find that Mrs Kerr affirmed the contract. It is important to note that with the exception of the conversations with Mrs Redpath that took place in July 2021, all of the matters complained of by Mrs Kerr took place at least seven months before her resignation. The meeting on 10 December 2020, which is her most substantial complaint, took place over eight months previously. The most recent of her complaints, being the Council's question over whether she wished to proceed formally or informally, dates back to at the latest 11 January 2021. Yet the resignation did not come until 13 August 2021.
35. Even the telephone calls of July 2021 have to be viewed in context. They were concerned with Mrs Kerr's return to work, something both she and the Council desired and something inconsistent with her accepting a repudiator breach of contract. They were part of a pattern of interaction between Mrs Kerr and the Council consistent with the employment going on: Mrs Kerr implemented the grievance procedure, essentially enforcing or at least operating the terms of her contract, she engaged with HR about a return to work, and she took benefits offered by the Council under her employment contract including sick pay and counselling.
36. I ought to stress, in case it is not clear, that it was a snip part of Mrs Kerr's case that the grievance procedure she invoked gave her any grounds for complaint. She has not objected to the procedure adopted nor to the outcome.

Disposal

37. For these reasons, I consider Mrs Kerr's claim of unfair dismissal to be unfounded and I dismiss it.

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**EMPLOYMENT JUDGE
RODGER**

**Judgment signed by
Employment Judge on:**

24 May 2022

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Written reasons

Written reasons will not be provided unless they are asked for by any party at the hearing itself or by a written request presented by any party within 14 days of the sending of the written record of the decision.