



EMPLOYMENT TRIBUNALS

Claimant: Ms V Urosevic

Respondent: John Lewis PLC

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD at London Central
On CVP**

On: 27 & 28 October 2022

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances

For the claimant: In Person

For the respondent: Mr B Williams (Counsel)

JUDGMENT

1. The claimant's claim for constructive unfair dismissal fails and is dismissed.
2. The date provisionally agreed with the parties (13 December 2022) to assess any compensation due to the claimant is not required and should be removed from all diaries/the tribunal's list.

REASONS

Background and Claim

1. This was a constructive dismissal claim lodged by the claimant in an ET1 dated 26 March 2020. The claimant had been employed by the respondent from 11 September 2011 until 8 November 2019, which was the effective date of the termination of her employment. However, the claimant had actually resigned on 13 October 2019 giving 2 weeks' notice, but this resignation had not immediately come to the relevant manager's attention.

2. The claimant had delayed in pursuing the claim due to her illness. The tribunal wrote to the claimant in February 2022 to ask if she wished to continue with the claim. This led to an application from the respondent for the claim to be struck out under rule 30 Tribunal Procedure Rules 2013 as a fair hearing was not possible.
3. There was a Preliminary Hearing to consider the strike out application on 31 May 2022. At that hearing the claimant confirmed on that she intended to pursue the claim as her health had now improved. The strike out application was refused, and the tribunal gave Case Management directions for the final hearing. The tribunal also set out the following as the issues for determination by the tribunal:
 - “The claim is about the reasons for the claimant’s resignation (but no details were specified)*
 - Was the claimant dismissed?*
 - Did the respondent 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.*
 - Was the breach of 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 action showed that she chose to keep the contract alive even after the breach.*
 - If the claimant was dismissed, what was the reason or principal reason for dismissal-i.e. what was the reason for the breach of contract?*
 - Was that a potentially fair reason?*
 - Did the respondent acted reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?”*
4. Unfortunately, at the case management hearing in May 2022 the parties did not discuss the nature/detail of the actual breaches alleged by the claimant.

The List of Issues

5. The following List of Issues was discussed and agreed with the parties at the commencement of the hearing on 27 October (with reference to the Issues agreed at the CMO on 31 May 2022). Reference was also made to the claimant’s document (prepared in May 2022- at pages 95-99) which was effectively the Further and Better Particulars (FBPs) of her claim.

6. I asked the claimant to specify the alleged breaches of the implied term of trust and confidence which she said led to her resignation on 13 October 2019 (page 444). The claimant said these were:
 - A cumulation of small incidents: 2 incidents in Summer/Autumn 2018 re Mr Shah, a partner, and also an incident just after Summer 2018 with a night shift partner Abdi – these were all reported to her line manager;
 - The incident with Alan Bradley in May/June 2019
 - The incident with Lucie Mongellas on 21 July 2019 – the claimant said that this was the “last straw” which led to her resignation.
7. The claimant also referred to being “effectively demoted” by being taken off the wines section in the summer of 2018, but she accepted that she had not specifically described this as a demotion previously
8. The claimant also accepted that she was not relying on how the respondent had handled the grievance process. She had resigned before this process and the appeal had been concluded and so these events could not have influenced her decision to resign. The claimant said that she has been “misinformed” by ACAS about whether she should resign, but that is not a matter for this tribunal to determine.
9. As the claimant was a litigant in person, I explained the function of the List of Issues; namely that these were the questions for the tribunal to decide in order to determine the claim. I also explained that I only needed to hear evidence which was relevant to those issues. I understood that the claimant (and respondent) may have many matters which they regarded as important and may wish to air – but that was not the purpose of this tribunal hearing. I also outlined the sequence which the hearing would follow as the claimant was not familiar with the tribunal process.
10. Having agreed the List of Issues and the relevant breaches alleged by the claimant, I read these out to the claimant again prior to her giving her evidence and on several other occasions. Despite this, the claimant sought several times to amend or extend the alleged breaches. I explained that this was not an appropriate way for her to conduct her case and at each stage reminded her of the basis on which she said she had brought her claim.

Conduct of the Hearing

11. The hearing was listed for 2 days and was conducted remotely using the Cloud Video Platform (CVP). There was an agreed electronic folder of documents of 593 pages and a bundle of 5 witness statements, including that of the claimant.
12. Mr Williams explained that Mr Alan Bradley was not able to attend to give evidence as he was unwell. He could provide no further information. The claimant objected to Mr Bradley’s absence and indicated that she did not believe the reason given for his non-attendance and said that he was, in her opinion, a “key” witness.

13. I explained to the claimant that as Mr Bradley was not attending, I would only give limited weight to his written witness statement. I also noted that his evidence was relevant predominantly to the incident in May/June 2019 with the claimant and that the claimant was able to give evidence on this incident herself.
14. I asked the claimant (and allowed her time to consider) if she was making an application to postpone the hearing, reminding her that it was over 2 ½ years since the claim had been lodged and it may take several months to reschedule the hearing. The claimant confirmed that she was not making any such application.
15. The tribunal heard evidence from the following witnesses: the claimant; Lucie Mongellas (former Retail Assistant Manager at the respondent's King's Cross Branch); Emma Anderson (former advisor in the respondent's People, Policy and Advice service); Mrs Fiona Sargent - known as George, (manager in the Appeals Office of the respondent). The witnesses adopted their written statements as their evidence in chief to the tribunal.

Day 1

16. The tribunal clarified the List of Issues and dealt with preliminary matters. The tribunal took time to read the witness statements and the claimant gave her evidence. Ms Mongellas had been scheduled to commence evidence in the late afternoon but was unable to do so as she did not have access to the relevant documents.

Day 2

17. The tribunal heard evidence from all the respondent's witnesses: Ms Mongellas Ms Anderson and Mrs Sargent. The tribunal heard oral submissions from both parties. I specifically explained to the claimant that she did not need to cite cases or legal authorities but simply to explain in her own words why she said her claim should succeed. As the hearing concluded at 4 pm, I reserved my judgment. However, I did agree with the parties a provisional date for a remedies hearing, should this be required, on 13 December 2022.

Findings of Fact

18. The tribunal will only make such findings of fact as are relevant to determine the List of Issues agreed with parties.
19. The claimant first joined the respondent on 11 September 2011 working in the wine department at the John Barnes Swiss Cottage branch in North London. At that time the claimant was studying for a BSC in Viticulture at Brighton University. The claimant agreed to move to the King's Cross Branch in September 2015, with a view to setting up and running the wine department there. The respondent made no challenge to the claimant's experience with regard to working with wines or to her performance generally.

20. The claimant said in her evidence that she had worked well with her line manager Mr Parry, who had worked with her at John Barnes and following his departure with Abdul Wadud, with whom she said she had had a good relationship.
21. The wine department at King's Cross was unsuccessful for a number of reasons, through no fault of the claimant. She was removed from the wine department in summer 2018, with her agreement. In her witness statement, the claimant said that she felt her new role was never fully defined and a temporary solution was found for her to help in the chilled food area, although this continued to be her role until her resignation in October 2019.
22. The claimant also explained in her witness statement that she believed there was some confusion with regard to her reporting line: Miss Mongellas was "technically" her section Assistant Manager and Angharad Gwillim (Anna) was Ms Mongellas' manager. However, the claimant said she continued reporting and dealing mainly with Abdul Wadud. This evidence was not accepted by the respondent's witnesses.

The alleged breaches

23. The claimant said that in summer/Autumn 2018 she experienced two incidents with Shah, a team leader, who the claimant said had "anger issues". The first involved Shah throwing a heavy handset on to the cage with wines in front of the claimant because she had asked him to unpack wines from the adjacent cage. This incident was mentioned in the Claimant's Further and Better Particulars (FBPs) at page 96.
24. The second incident involving Shah was not mentioned specifically in the FBPs. The claimant was asked why this was the case. She said that there was "no particular reason" she was simply telling her story and did not realise that she had to give that level of detail. The incident was mentioned in her witness statement and in her oral evidence the claimant explained that the second incident was when she was offering advice to a new colleague, Akira and Shah thought she was bothering Akira and told her to stop. He had raised his voice and the claimant said, tried to belittle her. The claimant had reported both incidents to her line manager, but not in writing.
25. Taking such evidence as the claimant provided at its highest, I do not find that either of the two incidents involving Mr Shah was sufficiently serious to constitute a breach of the implied duty of trust and confidence.
26. The claimant also referred to an incident in or around summer 2018 with a new night shift partner Abdi (FBPs page 96-97) This involved bagel bags being placed on a shelf but not filled up as usual. The claimant had told Abdi that the shelves need to be filled up and was subjected to a tirade of abuse. This incident was also reported to her line manager, but not in writing. The claimant referred to Abdi being "a scary six+ footer" and to him using derogatory language about the company. The claimant did not say that she felt threatened or at any risk of personal violence from Abdi. Again, taking the claimant's

evidence at its highest, I do not find that this incident was sufficiently serious to constitute a breach of the implied duty of trust and confidence.

27. As regards the incident with Mr Bradley in May/June 2019 (FBPs page 97), there is no clear written account provided by the claimant in her witness statement. However, it seemed to be agreed that the incident involved a discussion between Mr Bradley and the claimant, near the welcome desk in the presence of two other partners, Eyassu and Juvy. The claimant asked Mr Bradley to clarify the limit of the value of goods which partners were allowed to give away to customers under the “*it’s on us*” initiative. (A promotion whereby partners were allowed to use their discretion to give away free products in order to please customers thereby promoting goodwill).
28. Mr Bradley said that there was no specific price limit and that partners must use their judgment in a way which they thought would have maximum impact given a customer’s individual circumstances. The claimant had not accepted this explanation and insisted on being given a price limit.
29. The claimant said that Mr Bradley had sought to undermine and humiliate her in front of other colleagues. In his witness statement Mr Bradley denied that his tone towards the claimant was mocking or that he had intended to embarrass and humiliate her. As Mr Bradley did not attend as a witness, I can give limited weight to his witness statement.
30. However, even taking the claimant’s evidence at its highest, and even if Mr Bradley’s tone may have been patronising towards her, I do not find that this was a breach of the implied duty of trust and confidence. Such misunderstandings are an unfortunate, but not infrequent, part of workplace interaction.
31. The incident with Miss Mongellas on 21 July 2019, was described by the claimant as the “last straw” which led to her resignation on 13 October 2019. Again, the claimant’s description of this incident was vague: contained partly in the FBPs and partly in her witness statement, but neither account gives the full detail of the incident.
32. Piecing together the information provided by the claimant and by Miss Mongellas in her witness statement, the incident occurred on a Sunday when Miss Mongellas says she was the only manager present and so responsible for running the branch on that day. Miss Mongellas saw the claimant dressed in her own clothes (not in uniform) leaving the branch. Miss Mongellas asked the claimant where she was going and why she was out of uniform. The claimant replied that she was taking her break, which she always did at 12 o’clock. Miss Mongellas had said that there were no firm break times and the claimant should have remained in uniform. This much is not in dispute.
33. The claimant said that, in fact, she reported to another manager, Johnny and had told him that she was going on his break that he had failed to inform Miss Mongellas about this. The claimant said that she was allowed to wear her own

clothes during her break providing she returned in time and changed back into uniform.

34. The claimant objected to Miss Mongellas' tone towards her and the fact that she had been challenged in front of her colleagues and customers. The claimant had complained to Anna (Miss Mongellas's manager) who had discussed the matter with Miss Mongellas. Miss Mongellas accepted that she had been abrupt and perhaps should have taken a different tone, but she maintained that the substance of the questions which she had asked was acceptable and proper and that as the manager in charge of the branch the claimant should have reported to her when she was taking her break.
35. The incident occurred on 21 July 2019. There was a meeting between the claimant and Miss Mongellas on 28 July: Miss Mongellas believed that she had apologised for her tone at this meeting: the claimant denies this. The claimant believed that Anna had promised there would be workplace mediation with Miss Mongellas but this never occurred. On 30 July, the claimant worked her last shift at the King's Cross Branch: she then went on sick leave.
36. The claimant lodged her grievance (page 140) on 9 September 2019. As the grievance raised issues with Mr Bradley and Miss Mongellas, the grievance was conducted by Ms Anderson who held an initial investigatory meeting with the claimant on 5 October 2019 at which the claimant was accompanied by a colleague, Elaine Lewis. Notes of this meeting are at pages 152-173.
37. The claimant was taken to the final pages of the notes which recorded Ms Anderson agreeing that she could look into arranging a transfer for the claimant to another branch, but the claimant said that she did not have very much faith in this. Given the way she was feeling about her role and her health issues the claimant decided to resign on 13 October 2019. The email of resignation is at page 444. The claimant accepted that she made no reference in her resignation to any of the alleged breaches, nor did she make any reference to the fact that she was resigning because she felt that she could not continue in her employment. She said that she had never resigned before and did not know what to do.
38. I asked the claimant why she had resigned. She said it was because she wanted an apology from Miss Mongellas and a reference (though the mention of a reference is circular as she would not need one unless her employment was ended). I asked the claimant if she had received those, whether she would have been prepared to remain in employment. She said she would not be prepared to remain at the King's Cross Branch. She said she felt she had reached the point of no return when she resigned. She felt that the managers did not want to listen to her and that she was being "squeezed out"; she said that her emotions had got the better of her.
39. The claimant accepted that she had not explained her reasons for resignation in her witness statement. She said that she should have sought legal advice but

accepted that this had been her choice. She acknowledged that she had not been well prepared for the hearing.

40. Even though the claimant had resigned, Ms Anderson continued with the grievance process speaking to various witnesses including Mr Bradley and Miss Mongellas, Eyassu and Juvy. Ms Anderson concluded that the claimant's grievance should not be upheld and wrote to her on 16 November 2019 (page 280) to confirm the outcome.
41. The claimant appealed this decision on 12 December 2019 (page 318) and the appeal hearing was conducted before Mrs Sargent on 6 January 2020 (page 317). Mrs Sargent carried out the appeal as a review of Ms Anderson's decision. She recorded her findings in an appeal outcome letter dated 10 February 2020 (pages 415-419). The claimant's appeal was not upheld.
42. As it is accepted that the conduct of the grievance and appeal process is not an alleged breach, I make no findings of fact on the conduct of those processes.

The respondent's submissions

43. Mr Williams noted that in order to succeed in her claim, the burden of proof was on the claimant to show that there had been a fundamental breach/breaches of the implied duty of trust and confidence and that she had resigned in response to those breaches without any delay or waiver.
44. He pointed out that although the claimant was a person who could go into great detail of how she believed the business should operate and the failings of its managers, she had shown little of that inclination for detail in the way in which she had couched her legal claim. The claimant had only properly addressed her mind the nature of the breaches when prompted to do so by the tribunal at the commencement of the hearing.
45. Mr Williams noted that much of the claimant's evidence was opaque and unclear, including her evidence as to what had actually motivated her resignation. The pleadings and FBPs stated that the last straw was the incident with Miss Mongellas on 21 July 2019, but the claimant had not resigned until 13 October 2019. Furthermore, the resignation itself said nothing about the claimant's reasons for leaving the respondent.
46. The claimant had commenced the grievance process on 9 September, which suggested that she had some faith in the respondent's ability to hear her complaints, but then resigned shortly after the initial investigatory meeting on 5 October. In cross-examination the claimant had referred to a mix of factors, including the difference between the King's Cross and John Barnes branches and also to a lack of support and a lack of training and being "left in limbo". However, she had not included any of these as allegations of breach of contract. Further, the claimant had been moved from the wine department in summer 2018 but had not resigned till October 2019. This suggested that what she perceived as her "demotion" could not be the reason for her dismissal.

The Claimant's Submissions

47. The following is a summary of the claimant's submissions. The claimant said that the tribunal process over the last two days had showed her that she should have "*done her homework*". She had not realised that her witness statement was meant to be the totality of her evidence to the tribunal- she had thought (incorrectly) that she could continue to add to it. I note that the Case Management Order of 31 May 2022 described the witness statement as "*a document containing everything relevant the witness can tell the Tribunal*" (page 91).
48. The claimant said that she had felt trapped for a long time in a paradox: she was fighting for the values of the respondent but had to do this by taking them to court. She said that her job at King's Cross had been described as the same as her job at the John Barnes' branch, but this had not been honoured: although the claimant accepted that this had never been put in writing. The claimant said that the management at King's Cross simply did not understand what the wine department was all about.
49. The claimant said that her health issues been exacerbated by the lack of support provided by managers of the King's Cross Branch. She said she had struggled to keep the wine department going but there were so many problems with the way the King's Cross Branch was run. There were too many managers but not enough leadership; people broke the rules for their own benefit and gain. She said she was "old-fashioned" and could not tolerate this type of behaviour.
50. The claimant said that Alan Bradley had lied in his witness statement, and this was supported by the fact that he had not attended to give evidence. The claimant noted also that Anna had not chosen to give evidence.
51. The claimant stressed that her claim never been about compensation but about setting a personal example and pushing boundaries. She said she was the most driven person at the King's Cross store, but they chose not to follow her. The claimant praised the leadership at the John Barnes store which she described as exemplary and objected to the allegation in Mr Bradley's statement that she had criticised John Barnes' managers.
52. The claimant accepted that she was at fault by not itemising her breaches earlier, until the morning of the hearing. She said that things had built up "over the years" which led to her resignation. She said that she and Miss Mongellas had a different understanding of the way in which management worked at King's Cross. Miss Mongellas had not realised that the claimant reported to Johnny and not to Miss Mongellas. The claimant accepted that she might report to Miss Mongellas on paper, but that had never been the reality.
53. The claimant said she was glad that the case was over and now behind her and she thanked the Employment Judge and the tribunal for their time and said that the process and had enabled her to get the matter "*out of her system*".

Conclusions

54. Based on the findings of fact set out above, the tribunal finds that the claimant has not made out her claim for constructive unfair dismissal. The claimant has not shown on a balance of probabilities (being the relevant standard of proof) that there were any sufficient breaches of the implied duty of trust and confidence which in turn led to her resignation.
55. The tribunal also notes that in her submissions the claimant made minimal reference to the alleged breaches: referring only briefly to the dispute with Miss Mongellas, which she said had been the “last straw”.
56. From the claimant submissions, the tribunal draws the conclusion that the real reason for the claimant’s resignation was not the alleged breaches, but a build-up of her frustration with the way in which the King’s Cross store was managed, especially the claimant’s feeling that the managers and her colleagues did not match her high standards, as she perceived them.
57. The claimant also (as set out in her oral evidence) deeply regretted her decision to leave the John Barnes branch and move to King’s Cross. She had hoped for something better, but the outcome had been extremely disappointing. The tribunal finds that this was the real reason for her resignation. However, the matters which the claimant cited as leading to this disappointment and frustration were not matters which could constitute a breach of the implied term of trust and confidence. The respondent was entitled to run and manage the King’s Cross store as it saw fit, even if this did not comply with the claimant’s own standards.
58. The incident with Miss Mongellas which the claimant described as the last straw, was not in fact the last in the sequence of events. As set out in the claimant’s own oral evidence, that appeared to be the frustration which she felt at the investigatory grievance meeting with Ms Sanderson on 5 October 2019. The claimant resigned on 13 October 2019 but gave no explanation for her resignation whatsoever.
59. The claimant has not made out her case for constructive dismissal. Her claim does not succeed and the provisional date of 13 December 2022 for the remedy hearing (to calculate any compensation due) is not required and should be removed from all diaries/tribunal lists.

General Observations

60. The tribunal notes the content of the claimant submissions. The claimant accepted that she had not properly prepared for the hearing, not “done her homework” in her own words. The claimant acknowledged that she should have sought legal advice and that she was ill prepared for the tribunal hearing. The claimant also very honestly acknowledged that this was her own choice, but she must take the consequences of her decisions.
61. The final hearing had been scheduled on 31 May 2022, giving the claimant 5 months to prepare. The tribunal also notes the claimant’s comments that she

found the tribunal hearing valuable to enable her to put this matter behind her. This may well be the case, but the claimant should be aware that this is not the purpose of the tribunal process.

D Henderson
Employment Judge Henderson

JUDGMENT SIGNED ON: 18 November 2022

**JUDGMENT SENT TO THE PARTIES ON
18/11/2022**

FOR THE SECRETARY OF THE TRIBUNALS