



EMPLOYMENT TRIBUNALS

Claimant

Miss Katherine Ellen Bratt

v

Respondent

Neil Adams and David Asplin
Trading in Partnership as:
G David Bookseller

Heard at: Cambridge

On: 30 January 2023

Before: Employment Judge M Ord

Appearances

For the Claimants: In person

For the Respondent: Mr Neil Adams, Partner

JUDGMENT

The Claimant's complaint that she was unfairly dismissed is not well founded and her claim is dismissed.

REASONS

1. The Claimant was employed by the Respondent from 1 September 2017 until 9 December 2021, on which day the Claimant says she was unfairly dismissed. The Respondent says that the Claimant resigned. The Respondent also identified a number of complaints regarding the Claimant's conduct prior to termination of her employment.
2. The Respondent is a small private book shop in Cambridge. The Claimant was employed as a Shop Assistant on a part time basis. It is not in dispute that her employment ended on 9 December 2021.
3. The Claimant engaged in Early Conciliation through ACAS from 19 January 2022 until 22 February 2022 and presented her claim form to the Tribunal on 18 March 2022.
4. The questions for my determination were as follows:
 - 4.1 Was the Claimant dismissed by the Respondent?

- 4.2 If the Claimant was dismissed by the Respondent, did the Respondent have a potentially fair reason for that dismissal?
 - 4.3 If the reason or principal reason for dismissal was a potentially fair reason, did the Respondent act reasonably in treating the reason found as sufficient to justify the Claimant's dismissal?
 - 4.4 If the dismissal was unfair, did the Claimant contribute to her dismissal by her conduct prior to dismissal, and secondly what was the likelihood of the Claimant being fairly dismissed if the Respondent had followed a correct procedure? And
 - 4.5 If the claim succeeds, what Remedy is the Claimant entitled to?
5. To a substantial degree, the matters in this case are not in dispute.
 6. The Claimant had worked without, as far as I have been told, any incident prior and up to November 2021. On 27 November 2021 the Claimant began work at 1:30pm. The day was a particularly cold one and at that time the country was still emerging from the effects of the Coronavirus pandemic. Whilst non-essential retail premises were open, the Government advice was that all such premises should be well ventilated.
 7. The Claimant says that she was working in the front of the shop on 27 November 2021 with the door open. She says she was very cold indeed and that the door had been open for ventilation purposes.
 8. In her email of 6 December 2021, to the Respondent, she says this,
 - At about 2.45pm she closed the door because of the cold. The door would still bang and this alerted Mr Asplin, one of the partners in the Respondent firm, who asked the Claimant why she was shutting the door. After some discussion, the door remained closed.
 - The Claimant accepts that she had not made any complaint prior to that time to the Respondent about the temperature.
 - She left work early that day.
 - She had, in the meantime taken a break, had a hot chocolate at a nearby café and on her return had been offered a cup of tea which she refused.
 - The Claimant's next working day was 30 November 2021. The Claimant knocked on the door of the premises to be allowed in and Mr Adams was on the other side of the door and knocked back as an intended humorous gesture.
 - The Claimant told him to "*fuck off*".
 - In the Claimant's email, she said that she had both a shawl and mittens to wear at work that day.
 - The Claimant, however, asked for the door to be closed and when that was refused she left the premises at approximately 10.15am, 15 minutes after the start of her working day.
 - She told the Respondent she was not resigning and that she would return to work on the Thursday 2 December 2021.

9. The Claimant's remaining working days were 2, 3, 4, 7 and 9 December 2021.
10. The Claimant accepts that on 2, 3, 4 and 7 December 2021, the door to the shop was closed.
11. The Claimant's complaint before me, was that the Respondent's Partners, which at the time included Mr Collings, had not tried to discuss things with her. However, on her own evidence the following events took place:
 - 11.1 On 30 November 2021, Mr Adams had asked her if everything was okay. The Claimant says she felt that Mr Adams did not want to get involved so she told him to go away.
 - 11.2 She received a text from Mr Collings asking if she was okay after she left the premises on 30 November 2021. I was not told of any reply.
 - 11.3 On 2 December 2021, the Claimant had what she described as a "soothing chat" with Mr Collings.
 - 11.4 On 3 December 2021, whilst the Claimant was hoping Mr Asplin might apologise, she says she "*did not encourage a conversation*" as she was feeling hurt and upset by his behaviour. She left work when her working day was over and she was asked if she would work early on Saturday, which in her words she "*curtly refused*".
 - 11.5 On 4 December 2021, Mr Asplin asked why the Claimant was refusing to talk to him. When the Claimant replied that she wanted him to apologise, Mr Asplin seemed confused and asked if it was about the door or anything else. He said that if it was the door, he would apologise for that. But the Claimant says he did not seem contrite and that simply made her more upset. The Claimant accepted that on that day she told Mr Asplin that he did not care about the shop and that it would end up closing.
 - 11.6 On 7 December 2021, the Claimant was given a letter by Mr Adams warning her about her behaviour. The letter was expressed as a written warning although there had been no process or hearing prior to the delivery of that letter.
 - 11.7 On 8 December 2021, (by which time Mr Adams had seen the Claimant's email to Mr Collings of 6 December 2021) Mr Adams wrote to the Claimant again by email, telling her that he believed it was in the Claimant's best interest and that of the Respondent's business if she resigned. There was no threat of any repercussion if she did not.
 - 11.8 On 9 December 2021, the Claimant attended work. According to the Claimant, she was asked if she had received the email of the

previous day. She said that she had; so much is agreed. The Claimant says that she said was seeking legal advice; that is also agreed.

11.9 The Claimant then says that Mr Adams shouted her that she should not be there and that she had to leave, whilst also repeating the words, “*legal advice, legal advice*”. According to the Claimant, she said that she had to collect her personal belongings, Mr Adams told her to leave her key and that she then left believing she had been dismissed.

11.10 According to Mr Adams, the Claimant had arrived early for work, acknowledged that she had received the email, said she was taking legal advice and that at that stage she simply collected her possessions, handed back her door key and left, shouting “*Bye*”. Mr Adams assumed the Claimant had resigned.

11.11 On 10 December 2021, a letter from the Partners of the Respondent business to the Claimant said this,

“You appeared yesterday morning at 9.45am, when asked if you had received the email of the previous day (8 December) you said you had and was seeking legal advice. You collected your things, handed back your shop door key and left. Your contract with G David is terminated a of 9 December 2021.”

11.12 The Claimant replied three days later saying,

“I know you have terminated my contract at G David, I wish to appeal this decision.”

No reply was sent back by the Respondent on the basis they believed the Claimant had resigned.

The Law

12. The relevant Law can be stated very shortly; each employee has a right not to be unfairly dismissed.
13. Under s.98 of the Employment Rights Act 1996 (“ERA”), if an employee is dismissed then determining the question of whether the dismissal is fair or unfair, it is for the employer to show the reason or if more than one, the principal reason for dismissing and that it is a reason falling within subsection 2, or something other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
14. Under s.98(2)(b) ERA 1996, a potentially fair reason relates to the conduct of the employee.
15. Under s.98(4) ERA 1996, if the employer has established a potentially fair reason for dismissal, the determination of whether the dismissal is fair or unfair, having regard to that reason, 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 shall be determined in accordance with equity and the substantial merits of the case.

16. Applying the relevant Law to the facts in this case, I reached the following conclusions.

Conclusions

17. First, was the Claimant dismissed?
18. I find that she was not. I am not satisfied on the balance of probabilities that Mr Adams told the Claimant that she should not be there and had to leave. The words could, if they were used, amount to words of dismissal but I do not accept that they were.
19. I say that because according to the Claimant's particulars of claim, she received the email of 8 December 2021, suggesting that she should resign and the following day she *"went to the shop to collect some of her items"*. That to me indicates her intention was not to work that day, nor to continue her employment. If she was intending to continue her employment, why collect her personal items?
20. Accordingly, the Claimant left the Respondent's premises and by her conduct indicated that she would not be returning to work. The Claimant resigned. She does not pursue a claim based on any alleged fundamental breach of contract by the Respondent.
21. Even if I had accepted the Claimant's version of events and found that she had been dismissed, I would have found that the dismissal was procedurally unfair, but not substantively unfair.
22. The Claimant had, on her own admission, told one of the three Partners in the business to *"fuck off"* on 30 November 2021 and had engaged in other disruptive conduct. She left work early on 27 November 2021, walked out of work after approximately 15 minutes on 30 November 2021 and told Mr Asplin on 4 December 2021 that he *"did not care about the business and that the shop would close"*.
23. In a small retail environment, at that time with three Partners but now two and five staff including the Claimant, disharmony and disruption can be toxic. Her references to Mr Asplin's approach and her swearing at Mr Adams would amount to blameworthy conduct prior to dismissal. If the Claimant had been unfairly dismissed, I would have found that was sufficient to reduce her compensation to nil.

24. The only thing the Respondent apparently did wrong, as far as the Claimant is concerned, is leave a door open in accordance with prevailing Government Guidelines and then not apologise for doing so.
25. Had the Respondent conducted a disciplinary process based on the Claimant's comments to Mr Asplin and her swearing at Mr Adams, it was certain that her employment would have been summarily terminated on the ground of her conduct, or for some other substantial reason based around that conduct.
26. In the circumstances, any compensation awarded to the Claimant for unfair dismissal, for a failure to follow a fair procedure, would have been nil.
27. For the reasons stated above, the claim is dismissed.

1 February 2023

Employment Judge M Ord

Sent to the parties on: 10/3/2023

NG

For the Tribunal Office.