



EMPLOYMENT TRIBUNALS

Claimant: Mrs S N Laique

Respondent: Al Iman Community Educational Services Ltd.

Heard at: Reading ET **On:** 17 – 18 April 2023

Before: Employment Judge G. King

Representation

Claimant: In person

Respondent: Mr S. Hoyle

JUDGMENT

1. The Claimant's claim of unfair dismissal is not well founded and is dismissed.
2. The Respondent's application for a costs order was served prior to the hearing, as required by the Order of 1 February 2023. The Respondent must by 2 May 2023, provide to the Claimant and to the Tribunal confirmation of the sums claimed in respect of costs.
3. On reconsideration, the Tribunal finds that the Respondent's application is suitable to be dealt with on the papers, without a hearing.
4. The Claimant must by 16 May 2023 send to the Respondent and to the Tribunal her response to the Claimant's application, and include details of her current financial situation.
5. If the either party does not agree that the Respondent's application should be decided on the papers, without a hearing, the party must write to the Tribunal and the other side by 16 May, setting out the reasons why they say the application should be dealt with at an attended hearing.

REASONS

The Claim

1. The Claimant was employed by the Respondent for two periods, starting on 1 September 2016 until 31 May 2017. She then re-joined the Respondent in the same position from July 2019 until the Effective Date of Termination (“EDT”) on 27 November 2021.
2. In her claim form dated 4 February 2022 she brings a claim of unfair dismissal against the Respondent.

The Law

3. S.95 Employment Right Act — Circumstances in which an employee is dismissed.
 - (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) [...], only if)—
 - (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
 - (b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or
 - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
 - (2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
 - (a) the employer gives notice to the employee to terminate his contract of employment, and
 - (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

Deliberation

4. In her claim form the Claimant has brought a claim of unfair dismissal against the Respondent.
5. This is a case that very much depends upon the facts. It is the Claimant's case that she was unfairly dismissed on 27 November 2021, following failures by the Respondent to abide by any sort of process. The Respondent's case is that the Claimant resigned voluntarily on 27 November.
6. I begin my consideration by looking at the events of 18 November. It is the Claimant's case on this day, her son was assaulted at school, and she

informed the Respondent of this. The Respondent denies that she did. I do not make any findings on this point, as I do not consider that the unfortunate events that happened to the Claimant's son are relevant to her claim of unfair dismissal.

7. What also happened on 18 November is that the Claimant sent a message [A45] via WhatsApp to the Ms Khera, informing the Respondent that she would not be able to work on Saturday 20 November. The message states "I have been unwell for the past few days and I'm literally on my knees now, I don't think I can cope for Saturday".
8. The Respondent replied, asking the Claimant to let them know if she felt better on the next day, and asking if she had done a COVID test. The Claimant replied that she had done a test and it was negative.
9. The next significant event is Saturday 20 November. This was the day when the Claimant was due to work but had informed the Respondent that she was sick. The Claimant says that she took her son to an organised scout hike, and it was as she dropped him off there that she realised, or was informed, that there was insufficient adult supervision for her son to be able to go on the hike. She says that as her son wish to go on the hike, she agreed to accompany him. The hike lasted approximately 1 ½ hours.
10. At 11:25 on 20 November, the Claimant sent a text message to Ms Iqbal [A47]. The text message states "took a day off, pretending I'm not well. I'm actually volunteering for scouts. And guess who joins the team? Your kids and husband. I just asked them to not tell I was here".
11. The text message exchange also has messages which say "when I saw your son, I went oh please keep my secret" [A47] and "Oh, I'm going to be popular" [A48]. The text exchange also suggests that Ms Iqbal asked for Saturday 20 November off work so she could go on the same hike but her request was refused by the Respondent [A47]. This is supported by Ms Iqbal's witness statement [C18] and she was not challenged on this point.
12. Seven photos of the scout hike were taken which showed Claimant was on the hike.
13. Ms Iqbal then informed the deputy manager at the Respondent, Ms Mushtaq, about the photos and text message. Ms Iqbal says Ms Mushtaq would have been aware of these anyway, as she is on the Scouts WhatsApp group.
14. It is agreed that, on 22 November, the Claimant sent a message to Ms Khera, informing her that the Claimant would no longer be able to work on Saturdays and therefore needed to resign from her post [A32]. Ms Khera replied, asking when the Claimant was hoping her last day might be. The Claimant said she hoped mid-December. It was accepted by the Claimant in cross examination that this did constitute her resignation. The Claimant still maintains that her resignation was not accepted as she did not receive confirmation of when her last day was, but I am satisfied that the Claimant did properly resign, with notice, and that her last working day would have

been 11 December, given that this is the last day the Claimant would have worked before the middle of December.

15. Ms Mushtaq and Ms Khera then decided to meet the Claimant when the Claimant came into work on 27 November. It has been accepted by the Respondent that no advance notice was provided of this meeting. It is the Respondent's case that it was merely a chat and not part of any disciplinary process. The Claimant's case is that this was a disciplinary meeting, she should have been informed about this meeting, and she should have been formed of her right to be accompanied to this meeting.
16. The Tribunal therefore needs to decide, what was the nature of this meeting?
17. In considering any disciplinary process, or the build up to a disciplinary process, the Tribunal will take into account the size and resources of an employer. A small organisation, employing a few members of staff, will not be held to the same standard as a large employer with an internal HR department.
18. It is clear from the statements of Ms Khera and Ms Mushtaq, and from cross examination, that they wished to find out from the Claimant why she had been seen on the scout hike when she had been off sick, and that this was the purpose of their meeting on 27 November. Therefore, I do not accept that it was merely a chat. Nor, however, do I accept that it was a disciplinary meeting. The evidence of Ms Khera and Ms Mushtaq was both coherent and supportive, and agreed that they wanted to ask the Claimant questions about why she been on the scout hike. I therefore conclude that the meeting of 27 November was akin to an investigation meeting.
19. There is no statutory right for an employee to be accompanied to an investigation meeting, and the ACAS code of conduct refers to such meetings as being held without undue delay. I therefore do not feel it is unreasonable for the Respondent to have held this meeting on Saturday 27 November.
20. I then need to look at what happened at and following this meeting. The Claimant's case is that she was dismissed for gross misconduct without notice, and escorted from the premises. The Respondent's case is that the Claimant was sent home on full pay, as they believed she was not in the right frame of mind to do her job. It is the Respondent's further case that, having been told to go home, the Claimant, by her actions, resigned from her job.
21. I accept the evidence that, immediately after the meeting, the Claimant went to her desk, and was alone and unsupervised for a short period of time. It was at this point that she checked her phone, and realised that she had been removed from the various WhatsApp groups that were used to discuss the activity of the school.
22. Ms Khera's evidence is that she then spoke to the Claimant and told her to go home, as Ms Khera did not feel the Claimant was in the right frame of mind to carry out her duties. Ms Khera accepted in cross examination that

the Claimant had not raised her voice, but she had been agitated and was giving angry response to questions. This is supported by evidence of Ms Mushtaq, who also agreed the Claimant did not shout, but was adamant on her views and kept reiterating that she had done nothing wrong.

23. The Respondent's case is that the Claimant's agitated state is further evidenced by the Respondent allegation that the Claimant threw her ID badge down on her desk. The Claimant says she did not throw it but placed it on the desk. The Tribunal made no findings on whether it was thrown placed, but the important thing to note, in the view of the Tribunal, is that the Claimant returned her ID badge to the Respondent.
24. The Claimant then collected her son from a class that he was attending and went to her car. The Respondent says the Claimant was in a rage, while the Claimant says that she was emotional, because her son was crying, blaming himself for what has happened. I accept that it was an emotional time for the Claimant, and the Tribunal which is to make it clear that her son should not be blamed for anything that has happened. It is however accepted between both parties, that as the Claimant was driving off, she stopped her car and threw her headscarf out of the window.
25. The Respondent's case is that the headscarf landed in a puddle and that this is disrespectful. The Claimant says she did not know there was a puddle there, but accept she did throw her scarf on the floor out of the window of her car. The Claimant accepted in cross examination that she did not wear the headscarf outside of the school and it was akin to being part of her staff uniform.
26. The Claimant has cited the case of *Townsend v Commercial Storage Ltd* ET/2701352/2014, of 2015, which she says support her case. In the case of *Townsend*, Mr Townsend the Claimant was asked by the Respondent to come into work whilst on annual leave to work on a vehicle along with his boss, Mr Cooke. An argument ensued, regarding why Mr Townsend was having to do this when he was on leave, and Mr Cooke angrily told Mr Townsend "Get out of the yard and don't bother coming back on Monday." Mr Cooke subsequently tried to argue at a Tribunal that Mr Townsend had resigned, but the Tribunal found that Mr Townsend had been dismissed.
27. In my view, Ms Laique's case is suitably different from the case of *Townsend*. There is no evidence of any angry words from the Respondent, and, in contrast to the *Townsend* case, the Tribunal must consider the interpretation of the Claimant's behaviour on 27 November, not the Respondent's.
28. The Tribunal therefore has to consider the actions of a person who returns their ID badge to their employer, and then, shortly afterwards, throws their uniform on the floor while leaving the Respondent premises.
29. In the view of the Tribunal, this is the action of an employee who is resigning and does not intend to return. She had returned both her identification and has staff uniform to the Respondent, the uniform in particular in a dismissive manner, and then had driven off. I do not accept that removing the Claimant from WhatsApp groups constitute a dismissal.

There could be various reasons why the Claimant was removed from the WhatsApp groups, such as being suspended from work, which effectively was when she was told to go home on full pay. Such a suspension does not equate to dismissal.

30. I also reject the Claimant's suggestion that, when the Respondent acknowledged that she would not be attending on Saturday 20 November, this amounted to an authorised day off in which she could do as she wanted. She was very clear in her message [A45] that she was sick, and it was on this basis that the Respondent was not expecting her to be at work.
31. I further reject the Claimant's argument that the Respondent should have enquired of her whereabouts on 4 December, which was the next Saturday after 27 November. First of all, employees have a duty to attend work. It is not for the employer to constantly remind employees that they should be at work. Secondly for the reasons I've outlined above I find that the Respondent was entitled to consider the Claimant as having resigned without notice on 27 November. The Respondent therefore was not expecting the Claimant to be at work and had no obligation to contact her.
32. I will add that if I am wrong about the Claimant's resignation occurring by her actions on 27 November, I would have found that the Respondent was entitled to view the Claimant's conduct as gross misconduct, given the exchange of text messages where the Claimant effectively asks people to lie on her behalf. Considering the case of *Polkey*, I am satisfied that, if a fair process had been followed, the Claimant would have been dismissed in any event. Any potential damages would accordingly be reduced by 100%.
33. The findings of this Tribunal are therefore that the Claimant resigned without notice by her actions on 27 November. There was no dismissal. The Claimant's claim for unfair dismissal therefore fails.

Respondent's application for a Costs Order

34. The Respondent made an application for a Costs Order on 14 April 2023. It was therefore made in accordance with the Tribunal's order of 1 February 2023. The Tribunal accepts it was not possible to quantify some of the amounts claimed at the time. The Tribunal orders that the details of the sums claimed be sent to the Claimant and to the Tribunal by no later than 2 May 2023.
35. In Tribunal announced that the application should be heard at an attended hearing, however on reconsideration the Tribunal finds that this application is suitable to be determined on the papers alone, without the need for a further hearing.
36. The Claimant is therefore ordered to send her written response to the Respondent's application to the Respondent and to the Tribunal by 16 May 2023. The Claimant is to include details of her current financial situation, so as to assist the Tribunal when it considers whether or not to make a Costs Order.

37. If either party does not agree that the Respondent's application should be decided on the papers, without a hearing, the party must write to the Tribunal and the other side by 16 May, setting out the reasons why they say the application should be dealt with at an attended hearing.

Employment Judge G. King

Date: 24 April 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

18/5/2023

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FOR THE TRIBUNAL OFFICE