



# EMPLOYMENT TRIBUNALS

## Claimant

Deborah Hobbs

v

## Respondent

HR Lettings Limited

**Heard at:** Cambridge

**On:** 23 February 2023

**Before:** Employment Judge Freshwater

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr M Harvey (director)

## RESERVED JUDGMENT

1. The claimant's claim for breach of contract is not well founded and is dismissed.
2. The claimant's claim for unfair (constructive) dismissal is not well founded and is dismissed.

## RESERVED REASONS

### Introduction

1. The claimant is Mrs Deborah Hobbs. The respondent is HR Lettings Limited. The director of HR Lettings Limited is Mr Michael Harvey.

### Procedure and hearing

2. The hearing was held in person at Cambridge. It was listed for 2 days. The hearing did not last as long as had been expected, and concluded at lunch time on the first day. I reserved judgment.
3. I was referred to a bundle of 104 pages long. In addition, I read 3 witness statements submitted by the claimant (from herself, Ms Beattie and Ms Bill).

Mr Harvey submitted 1 witness statement from himself on behalf of the respondent.

4. At the case management hearing on 14 July 2022, it had been identified that the scope of the claim was unclear. In particular, whether or not the claim form as submitted included a complaint of unfair dismissal in addition to constructive dismissal and breach of contract. It was left until the final hearing to decide if the complaint did include one of unfair dismissal and, if it did not, whether Mrs Hobbs should be granted permission to amend her claim form to include that complaint.
5. I decided that permission should be granted for Mrs Hobbs to amend her claim form. I accepted her explanation that she had erred in not ticking all the necessary the boxes on the claim form and that the first she had been aware of a problem was at the hearing on 14 July 2022. As far as Mrs Hobbs was aware, she had clearly presented the basis of her claim from the outset. It was therefore not reasonably practicable for her to have applied to amend the claim form any sooner. There was no prejudice to the respondent (this point was accepted by Mr Harvey) caused by the amendment of the claim form today. The addition of a claim of unfair constructive dismissal would not mean that the Mrs Hobbs, or the respondent, would need to rely on any additional evidence. It was therefore in the interests of justice to hear the entire case today.
6. At the outset, I explained that I intended to deal with liability and, if necessary, any remedy for Mrs Hobbs. During the hearing, I heard submissions from both parties. I heard oral evidence from Mrs Hobbs and from Mr Harvey.
7. During the hearing, I allowed Mr Harvey to adduce evidence that had not formed part of the agreed bundle. This was an email sent by Mr Harvey to Mrs Hobbs about the arrangements following her resignation. Mrs Hobbs accepted she had a copy of the email. I decided it was important to an issue in the case, and that the late submission was not prejudicial to Mrs Hobbs. She was aware of the content of the email and accepted she had received it.
8. Mrs Hobbs was accompanied by her partner who provided support to her during the hearing, but did not present the case on her behalf.

#### Claim and issues

9. Mrs Hobbs claimed that she had been unfairly constructively dismissed, and that she had not been paid the correct amount of notice pay. In essence, Mrs Hobbs submitted that she was subjected to bullying at work, which her employer would not discuss with her, and which resulted in her ending her employment. She thought that, having received legal advice, she should have been paid one months' notice.
10. Mr Harvey submitted that there had been no bullying of Mrs Hobbs and that she had not been constructively or unfairly dismissed. He accepted that on occasion, the conduct of other members of staff towards Mrs Hobbs had fallen

short of the standard that he expected. In respect of the claim for breach of contract, Mr Harvey said that he thought that Mrs Hobbs had handed in her written notice and did not want to work her period of notice. He had offered to pay her salary until the end of the month in question out of good will.

### The law

11. Section 95(1)(c) of the Employment Rights Act 1996 (ERA) says that “an employee is dismissed by his employer if...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.” This is commonly known as constructive dismissal.
12. In the case of Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA, the Court of Appeal ruled that, for an employer’s conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it: “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed”.
13. In the case of Malik v BCCI; Mahmud v BCCI 1997 1 IRLR 462, guidance is provided for deciding if there has been a breach of the implied term of trust and confidence. Lord Steyn said that an employer shall not: “...without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”
14. In assessing whether there has been a breach of the implied term of trust and confidence, the test is not whether an employee has subjectively lost confidence in the employer, but whether, objectively, the employer’s conduct was calculated or likely to destroy or seriously damage trust and confidence without reasonable and proper cause: Leeds Dental Team Ltd v Rose [2014] ICR 94, EAT [20-21, 23-26].
15. If an employer cuts short an employee’s notice period, this will convert the resignation into a dismissal unless the contract specifically allows the employer to do this. In Marshall (Cambridge) Ltd v Hamblin 1994 ICR 362, EAT, the Appeal Tribunal held that there was no dismissal when, following the employee’s resignation, the employer exercised a contractual right to waive the notice period and terminate the contract with a payment in lieu of notice.

In *Grisogono v The Royal Masonic Hospital ET Case No.58591/94* the tribunal held that the employee was dismissed when her employer cut short her notice period after her resignation and made a payment in lieu of notice.

16. The general rule is that if one party to a contract purports to terminate it without giving proper notice, that amounts to a repudiation of the contract which must be accepted by the other party in order to bring the contract to an end — *Geys v Société Générale, London Branch* 2013 ICR 117, SC

### Findings

17. Mrs Hobbs started working for the respondent on 5 November 2018. She was employed as a Lettings negotiator. In May 2021, she was promoted to the role of Senior Lettings Negotiator and received a pay rise.
18. In or around August 2020, Mrs Hobbs informed Mr Harvey that she had concerns about the conduct of other members of staff towards her. Mr Harvey sent her a text message acknowledging that work was stressful and he appreciated that. He explained that he thought Mrs Hobbs was getting flustered and that everyone was stressed. He ended the message by saying “chin up granny” though he said in evidence that he could not recall saying this. However, I have seen a transcript of the message. I found this to be a surprising way to speak to Mrs Hobbs, but there was not much said about the comment by Mrs Hobbs. I am unclear if this was a normal, and acceptable phrase, in the context of their working relationship. On balance, I do not find it to be appropriate. Despite the fact the rest of the message is, in my opinion, perfectly reasonable, the use of the phrase appears dismissive of Mrs Hobbs’ concerns.
19. On 4 January 2021, it was accepted that Ms Smalley talked to Mrs Hobbs in a loud voice and told her she was ungrateful, had a negative attitude in the office and should look for another job. I believe the explanation for this, namely that Mrs Hobbs was talking about other jobs and saying she would like to work in sales. It was also accepted by Mr Harvey that she should not have been spoken to in this way.
20. Another incident occurred on or around 26 May 2020, when Ms Smalley raised her voice with Mrs Hobbs. This was because there had been a disagreement about the ability of Mrs Hobbs to take photographs of ceilings. Ms Smalley considered this to be a part of Mrs Hobbs’ job and Mrs Hobbs did not feel she could carry on taking photographs due to arthritis in her neck. Ms Smalley was frustrated and it was accepted she raised her voice to Mrs Hobbs. Following the incident, it was agreed that Mrs Hobbs would have a 50% reduction in the type of work requiring her to take such photographs. As a result, whilst I find that it was not appropriate for Ms Smalley to have raised her voice, I do accept that it occurred in the heat of the moment. Accommodations were made by Ms Smalley to assist Mrs Hobbs afterwards.
21. I also believe the evidence of Mr Harvey that sometimes people spoke in a raised voice to Mrs Hobbs because it was known that she had hearing

difficulties. She had not yet received a formal diagnosis, but it was clear to her colleagues that she did not always know when people were talking to her. This accounts for other occasions when Mrs Hobbs felt she was being shouted at (for example, on 3 September 2021 when Mrs Hobbs had made some mistakes around deposit registration).

22. In June 2021, a new member of staff was recruited. Mrs Hobbs felt she should have been informed. Mr Harvey did not feel that an explanation was necessary because recruitment was a matter for him. I do not find that this is notable, and accept Mr Harvey's explanation.
23. An administrative error occurred about the way in which leave for Mrs Hobbs was recorded in August 2021. This was rectified as Mrs Hobbs requested.
24. On or around 7 October 2021, Mr Harvey issued Mrs Hobbs with a final formal notice. He did this without seeking the views of Mrs Hobbs, or enabling her to set out her version of events. This was clearly inappropriate, which Mr Harvey accepted because he later retracted the warning. This, understandably, was greatly upsetting to Mrs Hobbs.
25. Mrs Hobbs was signed off from work by her GP towards the end of October 2021. I was not provided with the specific date in the evidence. Her sick leave lasted for approximately six weeks.
26. Whilst Mrs Hobbs was on sick leave, and not at work, the working arrangements of staff in the office were reorganised and she had been allocated a desk in a different position. Mrs Hobbs found this out when she went into the office on a Sunday to obtain her payslips which had been emailed to her work email address. She had not been consulted about the desk move and felt that her new desk would make it more difficult to interact with her colleagues and hear what was being said in the office. When Mrs Hobbs complained about the desk changes, she was told by Ms Smalley that the desks will remain as they are. Mr Harvey said that the desk positions were moved to reflect the fact that Mrs Hobbs was on sick leave and that the company needed a member of staff to meet and greet people entering the office. Also, it was thought that Mrs Hobbs would be better able to hear in the position of her new desk. There was clearly a difference in opinion between Mr Harvey and Mrs Hobbs about the reason behind moving the seating positions of staff in the office. I accept the evidence of Mr Harvey that it was not done to intentionally upset or target Mrs Hobbs. Whilst it was, perhaps, insensitive, to have moved her working position without informing Mrs Hobbs, I do not find that it was done maliciously.
27. Mr Harvey retracted the written warning he had given to Mrs Hobbs. He accepted that he had not followed the correct procedure.
28. On 9 November, Mr Harvey requested that Mrs Hobbs sent a FIT note from her GP. He also said that he would be happy to arrange a meeting with her when she returned to work.

29. Mrs Hobbs gave written notice that she wished to end her employment on 10 November 2021. This was by way of an email to Mr Harvey.
30. Mr Harvey accepted that Mrs Hobbs wished to end her employment. He believed that she did not want to work the notice period set out in her contract of employment (which was one month). This is evidenced by the fact that MR Harvey wrote back to Mrs Hobbs to confirm he accepted she did not want to return to the office and that he was happy to pay her until the end of November.
31. Mrs Hobbs was signed off sick from work from her GP until 12 November 2021. She received statutory sick pay until that date. From 13 November 2021 until 30 November 2021, Mrs Hobbs received her normal pay but was not required to work her notice. She did not return to the office, and posted back work items such as keys. Mrs Hobbs did not want to return to the office after she handed in her notice.
32. Mrs Hobbs' employment with the respondent ended on 30 November 2021.

### Conclusions

33. I accept that Mrs Hobbs truly believed that she was being bullied at work and that she, subjectively, lost confidence in the respondent as her employer. However, the legal test for me is an objective one. Objectively, I do not find that the respondent's conduct was calculated or likely to destroy or seriously damage trust and confidence. There was no breach of the implied term of trust and confidence in the contract of employment between Mrs Hobbs and the respondent. I find that Mrs Hobbs' employment ended because she resigned. She was not dismissed at any point.
34. On occasion, the conduct of some of Mrs Hobbs colleagues – including Mr Harvey - was not ideal. For example, when voices were raised in frustration. However, in my view, this does happen from time to time between colleagues. Not all people who work together will see eye-to-eye all the time and, in the heat of the moment, words are said in a way that causes upset. Mr Harvey accepted in his evidence that these occurrences should not have happened. Mr Harvey could also have been more sensitive to Mrs Hobbs on occasion, especially knowing that she had raised concerns about her treatment by others and that she had struggled (understandably) with the loss of her mother. There may not have been a perfect office environment all the time, but this does not mean that the respondent's conduct was calculated or likely to destroy or seriously damage trust and confidence.
35. I formed that view that Mrs Hobbs is a diligent person, who takes pride in her work and likes to get on with her colleagues. She said that she does not enjoy confrontation. However, the evidence also led me to conclude that she does not adjust well to change, particularly when the reasons for change are unclear to her or have not been explained to her and she has formed a view that a different approach is preferable. An example of this when she was allocated a different desk at work without consultation. Additionally, Mrs

Hobbs did not understand why she was required to attend an office meeting in the morning before going out to visit properties. This was at the direction of Mr Harvey, who had decided morning meetings were a business requirement. He explained that on occasion meetings were cancelled at short notice, and I find this to be a credible explanation.

36. Accordingly, while I found Mrs Hobbs to be a truthful person as to the reasons why she handed in her notice, this was based on her perspective. I do not find that she was constructively dismissed. I accept that there was a bad environment in the office, and that Mrs Hobbs and her colleagues did not always agree with each other which was stressful and frustrating for everyone involved. However, this does not mean that there was a course of conduct in place against her.
37. In respect of her claim for breach of contract, I find that although her contract had an express term of one month's notice, that in this case it was varied by agreement by both Mrs Hobbs and Mr Harvey. Mrs Hobbs made it clear that she did not want to return to the office to work and that she wished to terminate her contract immediately. I find she did not intend to work her period of notice. Mr Harvey accepted her resignation. However, he offered to pay her usual salary until the end of November. I find that the clear intention of both parties, at the time, was to agree this course of action. It is therefore different from a case where an employer has unilaterally cut short the period of notice following a resignation.

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Employment Judge Freshwater

Date: 12/5/2023

Sent to the parties on: 16/5/2023

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For the Tribunal Office