



# EMPLOYMENT TRIBUNALS

**Claimant:** Patricia White

**Respondent:** J.D. Wetherspoon PLC

**Heard at:** Cambridge

**On:** 20 November 2023

**Before:** Employment Judge Freshwater

## **Representation**

Claimant: In person

Respondent: Mrs C Urquhart (counsel)

# RESERVED JUDGMENT

1. The claimant's claim for constructive unfair dismissal is not well-founded and is dismissed.

# REASONS

## Introduction

1. The claimant is Patricia White. The respondent is J.D. Wetherspoon PLC. I will refer to the parties as the claimant and the respondent in this judgment. The witnesses will be referred to by their names as they are not parties to the case.
2. The claimant was employed by the respondent from 6 September 2016 until 27 January 2022 when the claimant gave notice of her resignation with immediate effect.
3. This case is about whether the claimant was unfairly (constructively) dismissed.

## Hearing and Procedure

4. The hearing took place in person. I was referred to a bundle of documents of 229 pages and a witness statement bundle.
5. The witness statement bundle contained 3 statements filed by the claimant (from Rachel Mackney, Rachel Mercer and Sandra Sykes) that were unsigned and undated. None of these witnesses attended to give oral evidence. The claimant gave oral evidence on her own behalf.
6. On behalf of the respondent, I heard oral evidence from Sarah Hemingway (Pub Manager); Shaun Mattocks (Area Manager) and Debbie Whittingham (Regional Manager).
7. I heard submissions from both parties at the end of the hearing.

#### Preliminary issues

8. At the start of the hearing, the claimant applied to amend her claim to include a claim for unpaid wages and holiday pay. The application was opposed by the respondent. I refused her application and gave reasons orally.

#### Claim and issues

9. The following issues were agreed with the tribunal at a case management hearing on 10 March 2023.
10. Was the claimant dismissed? The claimant resigned on 27 January 2022 without notice.
11. Did the respondent do the following things in breach of the claimant's contract of employment:
  - 11.1. Require the claimant to work more hours than on the rota with no additional pay or time off in lieu?
  - 11.2. Require the claimant to do the jobs of two people (the Hotel Manager and Housekeeper), servicing rooms and answering queries on reception;
  - 11.3. To work alone such that the claimant was unable to take breaks during every shift; and
  - 11.4. Requiring her to have her phone during lunch breaks, answer calls and return to the reception to greet guests or visitors?
12. Were the breaches fundamental? 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.
13. 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.

14. Did the claimant affirm the contract before resigning? The tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
15. Did the claimant affirm the breach before resigning? The tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
16. What was the reason for the breach of contract?
17. Was it a potentially fair reason?
18. Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

### The Law

19. 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.
20. 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".
21. 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."
22. 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].

### Findings of fact

23. The claimant commenced her employment with the respondent on 5 September 2016 as a receptionist. She was promoted to Hotel Manager of The Sandford House pub and hotel in 2018. Her manager was Ms Sarah Hemingway, who was the Pub Manager.
24. The claimant's contract of employment can be found at pages 200 and 201 in the bundle. That states she was salaried and required to work 45 hours a week over 5 days. She was entitled to a minimum of a 30 minute break for each shift over 6 hours in length. In exceptional circumstances, she could be required to work additional hours without remuneration. It was agreed between the parties that at some point the contract had been changed so that the claimant was required to work 40 hours a week. The claimant was entitled to time of in lieu of additional hours worked. She did not take the time off.
25. The claimant and Ms Hemingway worked alongside each other to ensure the day to day running of the pub and the hotel. The claimant's duties included: servicing hotel customers; supervising housekeepers and receptionists; ordering goods; maintaining a suitable working environment; banking; management of the hotel and staff; and any other duties that may be required to meet the needs of the business.
26. Ms Hemingway considered that her and the claimant worked well together. Her evidence was that they were good friends and great colleagues. They regularly spoke about their families. She said that she trusted the claimant to manage the hotel with little active management. She thought that the claimant did a good job. Ms Hemingway's evidence was that the claimant organised her own rota and took time off flexibly to attend personal appointments. She also allowed the claimant to organise breaks. She considered that the claimant was in control of her own duties.
27. The claimant's evidence was she agreed Ms Hemingway was a great colleague, but did not consider her a good friend. She accepted that they shared stories about their families, and that there was a friendly exchange in November 2021 when Ms Hemingway shared a photo of her nephew with the claimant.
28. The respondent was short of staff in the hotel, particularly in respect of housekeeping. This was accepted in evidence. It was not in dispute that the claimant often undertook housekeeping duties due to staff shortages. Ms Hemingway said that the claimant would not tell her that she was carrying out this work, but that in any event it was not unusual for managers to take on additional duties to meet business needs.
29. Phone calls to the hotel reception went to a phone that the claimant took with her during her lunch breaks. The hotel reception took calls for the pub. The claimant said that it would not have crossed her mind to leave the phone unattended. She also said that when she worked on reception, she was working alone. The respondent's evidence was that she was not alone as there was always other members of staff alone. I find that although the claimant may have been alone on the reception desk, she was not alone because there were other staff carrying out other functions in the proximity.

30. The claimant went off sick from work with chest pains that were under investigation on or around 14 September 2021. The claimant informed Mr Mattocks of this but did not raise any concerns about her working relationship with Ms Hemingway.
31. Three other members so the hotel staff were on sick leave at around the same time, which placed the pub staff under pressure as they were required to fill in for the hotel. On 16 September, the claimant notified Ms Hemingway of her continued sickness absence. A number of calls and messages took place between the claimant and Miss Hemingway during the period of sick leave. Work was discussed as well as the claimant's medical appointments. It was agreed that the claimant carried out some work tasks from home during her sick leave.
32. On 11 October, the claimant went to the pub and told Miss Hemingway that she felt better and was ready to return to work on a phased basis. Shifts were arranged and the claimant returned to work on 14 October. She did not attend work on 21 October, and Miss Hemingway contacted the claimant's partner who informed her that the claimant was very unwell and was in hospital.
33. There was further contact between the claimant and Miss Hemmingway, including on 29 October when she sent the claimant a photo of her nephew to which the claimant responded positively.
34. On 2 November, Miss Hemingway emailed the claimant to say that she was glad the claimant felt better and that she would be left of the rotas as "health...always that comes first." The claimant was told to tell Miss Hemingway if any hotel staff were messaging about issues.
35. On 5 November 2021, the claimant informed the Mr Mattocks that she was resigning with immediate effect. In her letter of resignation, she said that on her return from sickness absence she was doing both the role of Hotel Manager and Housekeeper. She said that other receptionists were not required to help with housekeeping. She said that she felt bullied to return to work and that there was a breakdown in trust due to the conduct of Miss Hemingway.
36. I accept Mr Mattocks' evidence that this was the first time he became aware of any issues between the claimant and Ms Hemingway. This is set out in his witness statement and was not disputed by the claimant.
37. Mr Mattocks wrote to the claimant on 5 November, asking her to reconsider her resignation. He suggested that the claimant raise her concerns as a grievance. He said that he intended to investigate the issues raised in any event. I accept the evidence of Mr Mattocks that he wanted to resolve matters and keep the claimant employed by the respondent. This is demonstrated by his prompt and efficient reaction to the claimant's resignation.

38. On 10 November 2021, Mr Mattocks wrote to the claimant to invite her to a grievance meeting. The meeting took place on 19 November 2021. Mr Mattocks then interviewed several members of staff in order to conduct his investigation. He partially upheld the claimant's grievance and informed her of the outcome on 22 December 2021. The part of the grievance that was upheld related to the records of clocking in and out which had not always been logged correctly. He directed that accurate records should be kept moving forward. His view was that managers were not adversely affected by the problems identified because they were paid a monthly salary. However, he did conclude that the managers (including the claimant) had all, on occasion, worked more than 40 hours.
39. No other part of the grievance was upheld, but Mr Mattocks did identify areas of improvement. For example, he thought that the management team had not handled the claimant's return to work well and he would address this with them.
40. On 29 December 2021, the claimant informed the respondent that she wished to appeal the outcome of her grievance. She raised additional allegations in her appeal. The claimant was granted unpaid leave while the appeal was being considered. Debbie Whittingham was appointed to chair the appeal. She is a Regional Manager employed by the respondent who had no prior involvement with the Claimant or the pub in question. Ms Whittingham reviewed the grievance outcome and concluded her investigations by 26 January 2022. Before she was able to make her findings, she was informed that the claimant had resigned. This happened on 27 January 2022.
41. In her letter of resignation, the claimant raised an allegation that Ms Hemingway's husband (also an employee of the respondent) had contacted the claimant's friends and family on social media. She said that she was resigning in response to that. After investigation, Ms Whittingham found that the social media account had been hacked and that it was the hackers who were responsible for any contact with the claimant's friends and family.
42. A copy of the grievance appeal outcome was sent to the claimant on 4 February 2022.

### Conclusions

43. I find that the claimant was a very conscientious employee who worked very hard without complaint. I have no doubt that, subjectively, she thought there was a need to carry a phone throughout her breaks and work additional hours without taking time off. The claimant did take on housekeeping responsibilities. She did this to ensure that business needs were met. However, objectively, I do not find that this was the expectation of her employer. She was not required to do the work of two jobs but took on additional duties. In addition, the claimant did not ask for help when she wanted to take a break from covering reception. She did, as she accepted, in her evidence take smoking breaks.

44. I accept the claimant's evidence that she did not know she could take time off in lieu for hours worked above her contractual requirement. However, it was not the case that she ever asked for any time off which was refused by the respondent. Instead, it appears she believed it was not possible and proceeded on that basis. Ms Hemingway thought that the claimant was working in a flexible way, and did not interfere with how the claimant managed her work. The claimant was not required to work additional hours with time off in lieu. The claimant did not receive pay for additional hours worked, but she was not entitled to that under her contract of employment.
45. It appears to me that the claimant and Ms Hemingway viewed their relationship in different ways. The claimant clearly had worries and concerns, however she did not express them to anybody before she submitted her grievance. I believe that it was a great shock to Ms Hemingway that the claimant felt the way she did. Ms Hemingway was simply unaware that her communication with the claimant was causing concern or upset.
46. The contact between Miss Hemingway and the claimant whilst the claimant was on sick leave was predominantly to keep in touch about the claimant's health. There was also discussion between the two about what was happening at work. At the start, Miss Hemingway appears not to have understood the gravity of the health issues as she did ask the claimant to undertake tasks. However, I accept that this was because she thought the claimant was bored at home and wanted to help. Ms Hemingway viewed the claimant as a friend and as a trusted colleague. The exchange between them appears friendly and a family photo was shared. As soon as Miss Hemingway realized the claimant was unwell again, she said that messages with hotel staff should be stopped. At no point does it appear that the claimant was unhappy with the communication. I am sure that if she had said to Miss Hemingway that she did not want to talk about work then she would not have been encouraged to carry out tasks from home. I do not find that the level of contact was untoward in the context of the working relationship between Miss Hemingway and the claimant.
47. I do not find there was a repudiatory breach of contract in this case. The allegations raised by the claimant (see paragraph 11 above) have not been substantiated by the available evidence. The respondent was not aware of the issues that were concerning the claimant. This is because the claimant had not raised them. As soon as she did raise them, the respondent investigated her grievances. Where actions were not good enough, this was identified and dealt with promptly. The respondent clearly wanted to keep the claimant in employment and encouraged her not to resign.
48. Although not strictly an issue in the case, the situation regarding the social media and Ms Hemingway's husband was investigated and the evidence before me is that his social media account was hacked. The respondent conducted a prompt investigation. This is not an example of untoward conduct to the claimant.

49. Objectively, I am not satisfied that the respondent's conduct was calculated or likely to destroy or seriously damage trust and confidence. I accept that subjectively, the claimant formed this view. However, that is not the legal test that applies in this case. The claim is not well-founded and is dismissed.

---

Employment Judge **Freshwater**

---

Date 17 February 2024

RESERVED JUDGMENT & REASONS SENT TO THE  
PARTIES ON 19 February 2024

FOR EMPLOYMENT TRIBUNALS

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>