



EMPLOYMENT TRIBUNALS

Claimant: Ms S Guest

Respondent: Citizens Advice Manchester

Heard at: Manchester

On: 28 August 2024

Before: Employment Judge Slater
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr B Hendley, Consultant

JUDGMENT having been sent to the parties on 2 September 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant brought a complaint of constructive unfair dismissal only. She relied on an alleged breach of the implied duty of mutual trust and confidence. The matters she relied on as together constituting (she said) a breach of that implied term were a post made by Andy Brown on the respondent's internal workplace system on 6 July 2023 and a conversation with her line manager, Dan Pye, around the end of July 2023 in which he told the claimant that a post that she had made on 6 July 2023 was inappropriate when she raised with him the post made by Andy Brown.

The Issues

2. The issues to be considered by the Tribunal were discussed with the parties and agreed and confirmed in a written note which I provided to the parties. A copy of this note is annexed to these reasons.

Evidence

3. I heard evidence for the claimant from the claimant only and for the respondent from Andrew Brown, Chief Executive Officer of the respondent, Dan Pye, Chief Operating Officer of the respondent, and Jo-Anne Sharkey, HR Manager of the respondent. I had witness statements from all these witnesses and they also gave oral evidence. The respondent had provided a witness statement for Rachel Evans, who was unable to attend the hearing but the claimant objected to me reading the statement. I decided not to read that statement given the objections and since it did not, as agreed by Mr Hendley, relate to the dismissal or add anything to the post of Ms Evans which appeared in the hearing bundle.

4. I had a hearing bundle of 106 pages.

The Facts

5. The claimant began work for the respondent in May 2010 as a solicitor. From 2013 she specialised in housing law. Around 2016 she became the supervising solicitor at the respondent organisation.

6. On 6 July 2023 Rachel Evans, a relatively new Director of Operations, posted on the respondent's internal system an announcement of the launch of a new Good Citizen Award. She wrote that each month they would have the opportunity to nominate their colleagues for demonstrating excellence when it came to being an excellent collaborator. She wrote that each month this would be reviewed by the leadership team and a winner would be chosen and the winner would win the opportunity to take their birthday off as an additional day's leave.

7. The claimant on the same day posted in response, "That sounds a bit dubious to me". Another employee posted also, "We are all good citizens. We know that it's really important for you all to be recognised for your achievements so maybe we should all have our birthday off".

8. Joanne Sharkey, an HR Manager, made a response saying that she was a bit disappointed by the negative reactions of them both to this initiative. She wrote that she was struggling to see how activity to celebrate people who were positive work colleagues was dubious or unwelcome. She also wrote that the annual leave entitlement was generous, and people still had the opportunity of booking their birthdays off each year as they got lots of holiday.

9. Andy Brown, the Chief Executive Officer, also made a post that day. He wrote as follows:

“I genuinely feel grateful to work with such supportive leadership and management teams working towards the shared goal of trying to make this organisation the best that we can whilst looking out for all the outstanding people that work within it. What a shame then that when a new and positive initiative is launched to recognise excellence a few react with such negativity. What is dubious is whether those negative people are really aligned with the values and culture of CA. Such a contrast to a week ago when we celebrated the success, achievement and dedication of a number of our teams at our social night.”

10. The claimant found out about these posts by Ms Sharkey and Mr Brown from another employee on 11 July. I accept that she found the post from Andy Brown to be humiliating.

11. Around the end of July, a couple of weeks after these posts, the claimant spoke to her line manager, Dan Pye, about the incident. Neither of them made a note of the conversation but both agree with each other's account of the conversation in the witness statements.

12. The claimant told Mr Pye she was annoyed with the posts by Jo-Anne Sharkey and Andy Brown – she said she did not feel valued by Citizens Advice Manchester. Mr Pye assured the claimant that she was valued. Mr Pye said something about staff having worked hard on the Good Citizen Awards and that they might feel undermined by the inappropriate comment the claimant posted. The claimant accepted that her post was ill-judged but considered the post in response to be disproportionate. Mr Pye was not critical to the claimant of Mr Brown's post. They talked about making concerted efforts to post success stories that might highlight the great work the claimant did for clients and to refrain from making negative and disparaging comments towards others for attempts to foster a positive working culture.

13. I accept Dan Pye's evidence that he did not view Andy Brown's post as demeaning and a veiled threat to the claimant's job security.

14. Subsequently, the claimant did post a positive comment in response to a colleague's success story and uploaded her own success story which received a number of congratulatory comments.

15. I accept the claimant's evidence that she started looking for other jobs in the summer of 2023 and that she applied for several jobs with the Housing Ombudsman and had an interview for a post there but was not offered the job.

16. I find that the claimant started looking for other jobs because she felt undermined by the posts made by management. Although the reasons the claimant subsequently gave to the respondent for resigning were genuine attractions with the Bolton and Bury job, the claimant had worked for some time pre and post Covid with the respondent without feeling the need to look for alternative work.

17. I accept the claimant's evidence that she would have resigned earlier had she been successful in an earlier job application. She could not afford to leave the respondent without another job to go to as she was the only earner in her household.

18. Around the beginning of October 2023, the claimant applied for a position advertised on the website of the Citizens Advice Bury and Bolton and they offered her the job which she accepted.

19. On 27 October 2023 the claimant called Dan Pye to say that she was resigning. In that conversation the claimant referred to there being less travel time and costs, more working at home in the new job and no requirement to travel to court. The claimant made no reference in the conversation to the conduct of Andy Brown.

20. By a letter dated 27 October 2023 the claimant resigned giving notice. The only reason given in this letter for her resignation was that she was going to a job with Bolton CAB. There is an offer letter from Bury and Bolton Citizens Advice dated 2 November 2023 for a start on 11 December 2023.

21. By a letter dated 6 November 2023, the respondent accepted the claimant's resignation and agreed that her last day of employment should be 27 December 2023. The claimant was requested to complete an exit questionnaire. The claimant did complete the exit questionnaire, and this included reference to a toxic environment and toxic people, although she made no specific reference to Andy Brown and his conduct.

22. By email dated 10 November 2023, Jo-Anne Sharkey invited the claimant to attend an exit interview. She received no response from the claimant, so no meeting was arranged.

23. The claimant's employment with the respondent ended on 27 December 2023.

Submissions

24. Both parties made oral submissions.

25. Mr Hendley submitted, for the respondent, that, even if there was a fundamental breach of contract (which was not conceded), the claimant had lost the right to complain about it because of the delay in resigning. Also, he submitted that the reason for resignation was not the alleged breach of contract; the claimant gave a different reason for resignation at the time than alleged on her claim form.

26. The claimant submitted that the post by Andrew Brown and the subsequent meeting with Dan Pye constituted a breach of the implied term of mutual trust and confidence. The claimant submitted that they did not have reasonable and proper cause for their actions/omissions. The claimant accepted that her post was ill judged but submitted that the response to this was disproportionate and inappropriate. She submitted that insult must have been intended by the respondent's post. She submitted that it was designed to humiliate her. The claimant said she could not bear to continue to work there. She gave other reasons for her resignation since she did not want to lose face or admit it had the effect it did. If she had got another job earlier, she would have left quite a lot sooner.

The Law

27. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 94(1) of this Act provides that an employee has a right not to be unfairly dismissed by his employer. Section 95(1)(c) provides that an employee is to be regarded as dismissed 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.

28. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not affirmed the contract by their conduct.

29. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

30. Mr Justice Browne-Wilkinson in the case of **Woods v W M Car Services (Peterborough) Limited** 1981 ICR 666 said that the Tribunal must look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

31. A breach of the fundamental term will not occur simply because the employee subjectively feels that such a breach has incurred, no matter how genuinely that view is held. The legal test entails looking at the circumstances objectively – that is from the perspective of a reasonable person in the claimant's position.

32. The breach of contract must be an effective cause of the resignation but does not have to be the sole or principal reason for resignation.

Conclusions

33. My conclusions applying the law to the facts I have found are as follows.

34. Andy Brown made the post on 6 July 2023 which I have referred to in my findings of fact. A few weeks later Dan Pye had a conversation with the claimant about the posts on that day, which included him telling her that the post made by her was inappropriate. He did not criticise the post made by Andy Brown.

35. I conclude that there is nothing in the conversation with Dan Pye which can be considered objectively as breaching or contributing to a breach of the implied duty of mutual trust and confidence. Dan Pye had reasonable and proper cause for criticising the post made by the claimant. Indeed, the claimant acknowledged in that conversation and at this hearing that her comment was ill-judged. Dan Pye had reasonable and proper cause for not criticising the post made by Andy Brown because he did not consider it to be demeaning or a veiled threat to the claimant's job security. Even if I had decided he did not have reasonable and proper cause for

not criticising the post by Andy Brown, I would have concluded that his failure to do so, when viewed objectively, was not calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. Dan Pye was not being asked to respond to a grievance from the claimant and it was not his responsibility to apologise for an act of his line manager, even if he had thought that an apology was due.

36. Whether the claimant was constructively dismissed, therefore, stands or falls on the post made by Andy Brown. This has to be viewed in the context of the claimant's post in response to that of Rachel Evans. The claimant has admitted that her comment was ill-judged, and I agree. To describe the initiative as "dubious" on a forum open to all employees was an inappropriate way of raising any concerns that she might have.

37. Given this context, I conclude that Andy Brown had reasonable and proper cause for responding in the same employee-wide forum supporting the initiative and regretting the negative reactions from the claimant and another employee.

38. I do not consider, however, that Andy Brown had reasonable and proper cause for commenting, "what is dubious is whether those negative people are really aligned with the values and culture of CA". I consider this went beyond a proportionate and appropriate employee-wide response to the posts of the claimant and another. I consider that such a disproportionate response would be capable of contributing towards a breach of the implied duty of mutual trust and confidence if there were other matters which, taken together with this, could constitute such a breach. However, there are no other such matters relied upon, since I have concluded that the acts/omissions of Dan Pye could not contribute to such a breach.

39. I do not consider that this part of the comment by Andy Brown, taken alone and in the context of a response to the posts of the claimant and another employer, and viewed objectively, was either calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

40. I consider that the part of the comment I have identified could damage the trust and confidence but not to such a serious extent that there was a breach of the implied duty of mutual trust and confidence.

41. I accept that the claimant came to the view that she no longer wanted to work for the respondent and that the comments by Andy Brown were an effective cause of this decision. But even if she held a subjective view that there was a breach of the implied duty of mutual trust and confidence, this does not mean that there was one, and, for the reasons I have given, I have concluded that there was not a breach of that term.

42. I conclude that the respondent was not in breach of the implied duty of mutual trust and confidence and the complaint of constructive dismissal fails for this reason.

43. Had I concluded that there was a fundamental breach of contract, I would have concluded that the breach was an effective cause of the claimant's resignation. Although there were other reasons which attracted her to the new job which she accepted, the comments made by Andy Brown were at least a material reason for

her looking for other work. I would also have concluded that there had been no affirmation of the contract. The claimant started looking for work in the summer of 2023 and could not leave because of financial reasons until she got another job. There were hints in the exit questionnaire of reasons for resignation other than those she expressed to Dan Pye. Although there was a considerable period of time between the comments of Andy Brown and her resignation, this delay was explicable in the circumstances.

Employment Judge Slater

Date: 10 September 2024

REASONS SENT TO THE PARTIES ON

Date: 13 September 2024

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FOR THE TRIBUNAL OFFICE

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ANNEX

List of claims and issues

Constructive Unfair dismissal - liability

1. Can the claimant prove that there was a dismissal?
 - 1.1 Did the respondent do the following things:
 - 1.1.1 A post made by Andy Brown on WorkPlace on 6 July 2023.
 - 1.1.2 Around end July 2023, Mr Pye telling the claimant that her post was inappropriate, when she raised with him the post made by Andy Brown.
 - 1.2 Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:
 - 1.2.1 whether the respondent had reasonable and proper cause for those actions or omissions, and if not
 - 1.2.2 whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
 - 1.3 Was the breach a 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.
 - 1.4 Was the fundamental breach of contract a reason for the claimant's resignation?
 - 1.5 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.
 - 1.6 If the claimant was constructively dismissed, has the respondent shown the reason or principal reason for the fundamental breach of contract?
 - 1.7 Was it a potentially fair reason under section 98 Employment Rights Act 1996? The respondent relies on the claimant's conduct.
 - 1.8 If the respondent has shown a potentially fair reason for the constructive dismissal, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason for the fundamental breach of contract?

Remedy for unfair dismissal

- 1.9 What basic award is payable to the claimant, if any?

- 1.10 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- 1.11 If there is a compensatory award, how much should it be? The claimant seeks £500 for loss of benefits and £800 for loss of salary. The Tribunal will decide:
 - 1.11.1 What financial losses has the dismissal caused the claimant?
 - 1.11.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 1.11.3 If not, for what period of loss should the claimant be compensated?
 - 1.11.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 1.11.5 Did the claimant unreasonably fail to comply with it by not presenting a grievance?
 - 1.11.6 If so, is it just and equitable to decrease any award payable to the claimant? By what proportion, up to 25%?
 - 1.11.7 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
 - 1.11.8 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?