



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Michelle Cluff

**Respondent:** G & L Jones trading as Go Local Extra Halewood Stores

**Heard at:** Manchester (by CVP)

**On:** 9 September 2024

**Before:** Employment Judge Rhodes

## Representation

Claimant: In person

Respondent: Linda Jones (proprietor)

# RESERVED JUDGMENT

1. The complaint of unauthorised deductions from wages is dismissed upon withdrawal.
2. The complaint of unfair dismissal is not well-founded and is dismissed.

# REASONS

## Introduction and issues

1. At the start of the hearing, the claimant withdrew her unauthorised deductions from wages complaint about unpaid holiday pay. That complaint is hereby dismissed.
2. The Respondent contested the complaint of unfair dismissal on the basis that the Claimant was not dismissed. The Respondent's position was that the Claimant resigned.
3. The key issue for determination therefore was whether the Claimant was dismissed or whether she resigned.

4. The Respondent did not advance any case about the fairness of a dismissal as an alternative to the primary case that she resigned.

## **Evidence**

5. I heard oral evidence from the claimant, Linda Jones and Sarah Telford (Miss Jones's niece and employee).

## **The law**

6. In order to bring an unfair dismissal claim, a claimant must have been dismissed in one of the circumstances set out in section 95(1) Employment Rights Act 1996 ("the Act").
7. The claimant relies upon termination without notice by the respondent (section 95(1)(a)).
8. Whether there has been a dismissal is matter for objective determination by the Tribunal in the light of all the circumstances.
9. Where there is a dispute about whether an employee was dismissed, the burden of proof is on the claimant.
10. Where there is an ambiguity about the language relied upon as constituting the 'dismissal', a Tribunal should consider all the surrounding circumstances and ask itself how a reasonable employee would have understood the words used in those circumstances.
11. A Tribunal must look at what happened before and after the events relied upon as the 'dismissal' and take account of the nature of the workplace. In ***Futty v D and D Brekkes Ltd 1974 IRLR 130***, a foreman, out of frustration at the claimant's conduct, told him "*if you don't like the job, fuck off.*" After considering all the surrounding circumstances, the Tribunal found that this did not amount to a dismissal. Rather, it was intended to be an "*exhortation to get on with the job.*"
12. If an employer asks an employee to clarify whether words spoken amounted to a resignation, this may point towards a conclusion that the employee had not resigned (***Goodwill Incorporated (Glasgow) Ltd v Ferrier EAT 157/89 and Tom Cobleigh plc v Young EAT 292/97***). It follows that the reverse must also be true: if the employee asks the employer for clarification, it may indicate that there had been no dismissal.

## **Findings of fact**

13. Miss Jones and her brother run the Respondent's convenience store business in partnership. The Claimant worked for the Respondent from 4 June 2018 until her employment ended, in disputed circumstances, on 27 November 2023.
14. In reaching my findings, I have generally preferred Miss Jones's evidence over that of the Claimant. On the whole, Miss Jones was more measured and composed than the Claimant when giving evidence. The Claimant was, at times, quick to anger and did not always pause to listen to Miss Jones's

responses to her questions or allow Miss Jones to finish what she was saying, frequently talking over her. Miss Jones submitted, and I accepted, that the Claimant's demeanour at the hearing was similar to how she had reacted during the conversation between them on 27 November 2023 in which the Claimant said that Miss Jones dismissed her. For this reason, Miss Jones is the more likely of the two to have the most detailed recollection of the crucial conversation.

15. There were other reasons (which I explain below) for preferring Miss Jones's evidence to that of the Claimant.
16. I found Miss Telford's evidence to be of limited assistance because she did not overhear the conversation between Miss Jones and the Claimant; she only witnessed events that were peripheral to it.
17. On about 12 November 2023, the Claimant's sister (Chelsea) spoke to Miss Jones by telephone. Both Miss Jones and the Claimant were working in the shop at the time but the Claimant did not overhear the conversation. Chelsea expressed concern to Miss Jones about the Claimant's mental health. Miss Jones had not observed anything of concern but spoke to the Claimant after her conversation with Chelsea to enquire about her health. The Claimant was subsequently signed off work and, as events were to transpire, did not return to work.
18. The Claimant's case was that, during the course of that conversation, Miss Jones asked Chelsea whether she was aware of the Claimant and a friend selling drugs. Miss Jones denies this, the Claimant did not hear her saying this to Chelsea and Chelsea did not give evidence at the hearing. I therefore accepted Miss Jones's denial.
19. On 26 November 2023, while the Claimant was still off sick, one of the Respondent's customers (who was also a friend of the Claimant) told Miss Jones that the Claimant told her that she (Miss Jones) had accused the Claimant of taking drugs. Miss Jones was upset to hear such an allegation.
20. Pausing here, the Claimant was wholly unprepared to accept that her sister may have been mistaken, or that she may have misconstrued something that her sister had said to her. She automatically assumed that her sister was telling the truth and that Miss Jones was lying. It should also be kept in mind that, by the time that the customer passed this allegation onto Miss Jones, she was recounting it third-hand. At each transmission of the allegation, there was scope for misunderstanding and embellishment. The Claimant was not prepared to accept any of this nuance and, as events were to prove, it was imprudent of the Claimant not to verify the allegation before repeating it to one of the Respondent's customers.
21. Returning to relevant events, Miss Jones wanted to speak to the Claimant about this to set the record straight and ensure that there would be no repeat but the Claimant was still off sick.
22. The following day (27 November 2023), the Claimant wanted to collect her sick pay. She exchanged messages with Miss Telford about this and initially they agreed that the Claimant's neighbour (Candice) would collect the

money later that day but Candice's plans changed and the Claimant went to collect it herself.

23. It was not the case, as the Claimant alleged in her statement, that she "was forced to attend my last place of employment by Miss Jones as she refused to pay my week's wages."
24. The Claimant's statement goes on to say that having to attend the shop "heightened my emotional state" and that she "had to gain the support of a couple of my friends to attend."
25. The Claimant's account is undermined by the content of the messages that the Claimant exchanged with Miss Telford that morning, which are worth quoting in full:

Claimant (9:52am): *"Hi Sal did cand come in xx"* [Sal is Miss Telford. Cand is Candice]

Claimant (10:53am): *"Sal I'm on me way up for me wages ok cand went to town xx"*

Miss Telford (10:57am): *"No she hasn't come in yet c"*

[The Claimant deleted a message at 10:58am]

Claimant (10:58am): *"I'm coming up now babe xx"*

26. Miss Jones had not refused to pay the Claimant's wages. The Claimant was not forced to go to shop. There was no any evidence that she was in a heightened emotional state about doing so or that she needed the support of her friends to attend the shop. The Claimant's wages had been prepared and were ready to collect. The messages do not convey any anxiety about going to the shop. The Claimant attended of her own volition and, until 10.58am that morning, nobody was expecting her to go into the shop that day.
27. The striking discrepancy between the Claimant's statement on this point and the contemporaneous messages about the same thing adversely affect the credibility of the remainder of her evidence. This is another reason why I preferred Miss Jones's evidence and I accepted her account of what happened next.
28. Upon seeing her in the shop, Miss Jones asked the Claimant "do you have a minute?" and invited her into the back room. In view of my findings at paragraph 26, this was not a premeditated move by Miss Jones; it was opportunistic. Miss Jones wanted "to get to the bottom of the truth". She wanted to get the conversation over with and clear things up.
29. Miss Jones denied to the Claimant that she had accused her of selling drugs and explained to her that she should have ascertained the truth before repeating the claim to others, particularly a customer. She told the Claimant she should retract the allegation but she refused. She also raised a concern about discouraging customers from purchasing vapes. The Claimant

became angry. Miss Jones told that she would have to reassess her employment if she continued to conduct herself in that way. The Claimant replied "fuck off – stick your job" and walked out. The conversation was brief – it was over in the time that it took Miss Telford to serve one customer.

30. Shortly afterwards (12.09pm), the Claimant messaged Miss Jones to say "*Hi Linda after our conversation if you have sacked me can I have it in writing and explaining the reason why please*".
31. Miss Jones replied 10 minutes later: "*Yes I can do that*". When Miss Jones was challenged about why she did not correct the Claimant if she had not been sacked, her response was that she assumed the Claimant was asking if she had been sacked as a result of how she behaved during the meeting. She thought it was hypothetical. It was unfortunate that Miss Jones did not take the opportunity to clear things up but, for the reasons below, nothing ultimately turns on this.
32. The Claimant did not return to work. She messaged Miss Jones again on 1<sup>st</sup> December 2023 asking for a termination letter.
33. Miss Jones responded on 4<sup>th</sup> December 2023 to the effect that she had the Claimant's P45 and outstanding money. The Claimant went to collect it.
34. The P45 recorded 3<sup>rd</sup> December 2023 as the termination date. Miss Jones explained that this was the date on which the Claimant was next due to work (upon her expiry of her fit note) and, when she did not return, assumed that she had resigned. She characterised the period between 27<sup>th</sup> November and 3<sup>rd</sup> December 2023 as a cooling off period and was waiting to see if the Claimant returned to work.

## **Conclusions**

35. The burden of proving that she was dismissed was on the Claimant. The Respondent did not have to prove that the Claimant was not dismissed.
36. The Claimant's case is that by saying "that's it. It's done", Miss Jones had terminated her contract. For the reasons given above, I preferred Miss Jones's account of the conversation on 27<sup>th</sup> November 2023 and I do not find that Miss Jones said that or anything that had the effect of terminating the Claimant's contract.
37. However, even if I am wrong about that, the words "it's done" are ambiguous. "It" could have referred to the conversation that they were having or the issue they were discussing. "It" did not unambiguously refer to the Claimant's ongoing employment.
38. Further, in her message immediately after that conversation, the Claimant asked Miss Jones "*if you have sacked me...*". It was therefore not clear to the Claimant that she had in fact been dismissed. As per ***Goodwill Incorporated (Glasgow) Ltd v Ferrier EAT 157/89*** and ***Tom Cobleigh plc v Young EAT 292/97*** (referred to above), the Claimant's request for clarification implies that clear and unambiguous language was not used.

39. The surrounding circumstances also suggest that Miss Jones did not dismiss the Claimant on 27 November 2023:

- a. I accepted Miss Jones's evidence that, if she had intended to dismiss the Claimant, she would have had to involve her brother (as her business partner) in that decision and she was aware that she would have needed to follow due process.
- b. Miss Jones was unaware until very shortly before that the Claimant would be in the shop that day. I have rejected the Claimant's evidence that Miss Jones "forced her to attend" and that there was any premeditation on Miss Jones's part.
- c. Miss Jones did not send a termination letter in response to the Claimant's two requests. This is consistent with Miss Jones's evidence that she thought the Claimant was referring to a hypothetical scenario in which Miss Jones dismissed her as a result of her conduct at the meeting on 27<sup>th</sup> November 2023.
- d. The P45 recorded a termination date of 3<sup>rd</sup> December 2023 (not 27<sup>th</sup> November 2023) being the date on which Miss Jones next expected the Claimant to attend work.

40. For all these reasons, I find that the Claimant was not dismissed and her claim therefore fails and is dismissed.

Employment Judge Rhodes  
Date: 27 September 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
30 September 2024

FOR EMPLOYMENT TRIBUNALS

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