



EMPLOYMENT TRIBUNALS

Claimant: Ms E Voskou

Respondent: Voscap Limited

Heard at: London Central

On: 28 August 2024

Before: Employment Judge Forde

REPRESENTATION:

Claimant: Mr R Jones, Counsel

Respondent: Miss E Walker, Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of automatic unfair dismissal is not well-founded and is dismissed.
2. **Correction:** The complaint of unfair dismissal is unfounded and is dismissed
3. The complaint of breach of contract and/or wrongful dismissal is not well-founded and is dismissed.

Reasons

1. The background to this case is that the claimant was employed by the respondent from 1 April 2020 until her dismissal on the 15 January 2024. She presented her claim form to the Tribunal on the 19 April 2024 following a short period of ACAS conciliation. While it was said in the respondent's initial response that the claimant's claim had been submitted out of time, this issue was not pursued.

2. In terms of procedure, this case had automatic directions issued and no case management hearing.
3. The claimant says that she was employed as the respondent's company secretary, whereas the respondent describes her as being a personal assistant to the managing director and office administrator. How the claimant was employed is largely immaterial for the purposes of this claim. What is important is the relationship between the claimant and in particular, Mr. David Voskou, the managing director of the respondent and the claimant's husband.
4. The Claimant pursues claims of automatic unfair dismissal on the basis of making a protected disclosure, notice pay and holiday pay, as well as an "ordinary" unfair dismissal claim.
5. In its essence, this is a case which turns on what the claimant did and whether the claimant had authority to do what she did.
6. The claimant was dismissed because it was found that she had accessed Mr. Voskou's e-mail account in circumstances where it is said by the respondent that she had no authority to do so. First, obtaining access to the account and then second, accessing personal documents of Mr Voskou; the respondent says that the circumstances of these allegations substantiate a finding of gross misconduct on the part of the claimant.
7. The claimant says that she had authority to access the Mr. Voskou's e-mail address. Alternatively, the claimant says that she had come into knowledge of an allegation of sexual assault involving another Mr Voskou and a female employee. She decided that it was incumbent upon her to investigate that allegation of sexual misconduct and did so by way of a review of the of Mr. Voskou's e-mail account.

Evidence

8. In terms of evidence. Miss Cenoli, the dismissing officer, gave evidence first, followed by Mr. Voskou who gave evidence about the access to his e-mail account and in particular, whether the claimant had authority to access the account as she alleged as well as evidence of the relationship between the acts alleged by the claimant and the her dismissal.
9. Mr Goodhew, a director of the respondent and the person who investigated the allegations against the claimant, had provided a witness statement but was unable to attend the hearing to give evidence because he was on a holiday in

Italy and had not informed his solicitors of his absence for the hearing. Therefore, it was not possible for him to join the hearing, but in the absence of the acquisition of the necessary authority that would have enabled him to attend and give evidence.

Witnesses

10. Miss Cenolli gave evidence first. I found her evidence to be largely consistent with the documentary evidence to be found in the bundle of documents as well as her witness statement. In short. It was clear that she get placed a great deal of reliance on the evidence obtained from independent IT consultants which the respondent had relied upon to investigate its concerns as to the claimant's conduct and which ultimately lead to her dismissal. In this matter. The respondent engaged a company called CYFOR. And, by way of an e-mail dated 14 December 2023 from Mr. Will Poole of CYFOR, it can be seen that it was Mr. Poole's opinion that the claimant could only have obtained access to Mr. Voskou's e-mail account either by using his username and password, or by having been allowed access by way of a of an administrator.
11. It is the respondent's case that access by way of an administrator could only have come about by that access being obtained via Sharp IT, The respondent's external IT consultant. In turn, Sharp IT provided to Mr Goodhew details of the times when access to Mr Voskou's email account had been limited in access on the 25 July 2022 at Mr Voskou's request because he had, at that time, concerns that the claimant was accessing his email account. It is the respondent's case that it had been circulated within the respondent that access to Mr Voskou's account was restricted on 7 July 2023. The claimant denies that she received notification that that that received the notification in July 2023. In fact, it is the claimant's case that access resumed for her in October 2022. How I found that how the claimant accessed the account to be central to the issue of misconduct that I have to decide.
12. It was Miss Cenoli's finding that the claimant accessed the account. She reached that conclusion in part relying on the information received from CYFOR and from Sharp IT. The respondent is criticised for not interrogating the CYFOR findings in detail than it did. However, I am not an IT expert and no IT expert evidence was presented which could undermine the evidence provided by CYFOR and relied upon by Miss Cenoli to dismiss the claimant.
13. Mr. Voskou gave evidence next. I found him to be a straightforward witness. He made clear the reasons and rationale behind the denial of access to his email account as being the need to exclude the claimant from having access to his emails. He said that he had lost trust in the claimant and provided an example by

way of a change that he made to his witness statement and specifically paragraph 4 in the in the following way:

“In around July 22, following another heated argument with the claimant and because of previous actions that led to funds of £60,000 to leave my account, I told her that I would move her access to my emails because I had lost trust in her.”

14. A further amendment at paragraph six of his witness statement serves to illustrate the substance of his concern:

” the documents found printed were found by my brother who found them in her personal drawer at her formal residence, so I wasn't the person to discover them.”

15. It was put to Mr. Voskou in cross examination that his observation here was self-serving because he was saying that the documents were clearly private, of little use of value to the claimant in her employed capacity and had only been printed by the claimant to be used by her in the divorce proceedings that were ongoing between the two. Mr. Voskou vehemently denied this. He explained that that he had informed the claimant that her access had been denied to his e-mail address. He reiterated the respondent's case that either the claimant had access to the to his e-mail address by way of administrator access or by using his. Password and Username. In other words, the claimant had circumvented the restriction placed on access to gain access in circumstances where she knew that she was not to access the account. He was challenged as to whether or not he was involved in the in the investigation and decision to dismiss her which he denied.
16. The claimant gave evidence next. During the course of her cross examination, she reiterated her position as set out in her witness statement that the investigation conducted was inadequate for a number of reasons, largely technical ones. She was challenged in relation to what was her expressed intention behind obtaining certain documents that she had acquired from Mr Voskou's e-mail address and her intention insofar as the use of that information.
17. It was put to the claimant that her case in this regard had evolved over time. She was now saying that her case was really one where she was seeking to investigate allegations of misconduct concerning Mr. Voskou and the female employee. However, when pressed in cross examination, she conceded several times that was also investigating the matters relating to the breakdown of her

marriage. She restated her position that the her dismissal was a predetermined as a result in the breakdown in her relationship with Mr Voskou.

Issues to be decided

Unfair dismissal

18. What was the principal reason for the claimant's dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996? The respondent asserted that it was a reason relating to the claimant's conduct.
19. If so, was the dismissal fair or unfair within section 98(4), and, in particular, did the respondent in all respects act within the band of reasonable responses?

Automatic unfair dismissal

20. Alternatively, the claimant relies on what she says was an automatic unfair dismissal because she had made protected disclosures and says that the her dismissal is linked to the disclosures that she made to the respondent.

Breach of Contract

21. How much notice was the claimant entitled to receive?
22. Did the claimant fundamentally breach her contract of employment by committing an act of gross misconduct? This required the respondent to prove that the claimant committed an act of gross misconduct.
23. For the claimant's claim of unfair dismissal, the focus under section 98(4) was on the reasonableness of management's decisions, and it was immaterial what decision I would myself have made about the claimant's conduct. But for the breach of contract claim, I had to decide for myself whether the claimant was guilty of conduct serious enough to entitle the respondent to terminate the employment without notice.

Findings of fact

24. The Claimant was employed as the personal assistant to David Voskou, the Managing Director of the Respondent. She was also appointed as a Company Secretary at Companies House.

25. It is agreed that the claimant was informed by a letter dated 6 November 2023 of her suspension from employment on full pay for the reason of accessing sensitive information from other staff users' accounts for her own and other's personal gain. She was asked to refrain from accessing the Respondent's IT systems, office and use of assets (including the EE mobile telephone provided to her), pending the Respondent's investigations. The Claimant was referred to the Respondent's disciplinary procedure in regard to her rights.
26. The Claimant was invited to a disciplinary meeting via email dated 20 December 2023, asking her to attend a disciplinary meeting on 12 January 2024 to discuss a number of allegations, namely, using prohibited access to read and copy confidential emails and documents relating to their separation and divorce proceedings, without authorisation. Among the documents found to have been accessed included confidential company banking records of the respondents.
27. 16. On 12 January 2024, the Respondent held a disciplinary meeting. Present in this meeting were the Claimant, Alda Cenoli (Assistant Insolvency Manager), Rima Shah (Senior Manager) and Dalya Shaw who took notes of the disciplinary meeting, and a copy would then be provided to the Claimant. Miss Cenoli started the meeting by stating that the purpose of the meeting was to discuss the allegations of gross misconduct regarding the allegations of the Claimant accessing confidential information without authorisation and using them for her own personal use. It was made clear at the start of the hearing that the purpose of the meeting was to discuss the 'alleged misconduct' and was in no way related to the Claimant's divorce matter.
28. Miss Cenolli stated that the Respondent had undertaken an investigation with CYFOR, a private forensics' specialist, which showed that the Claimant had accessed Mr Voskou's email account and had copied emails to her own personal email account at work. Mr Voskou had requested the Respondent's IT to put a lock on all staff, which took place on 25 July 2022. This was in addition to others receiving emails from his account that had not been written by him. The Claimant confirmed at the hearing that her access as well as everyone else's access to the email account was stopped in July 2022. She stated that she obtained access to the email in October 2022, and she didn't see the need to inform anyone.
29. The Claimant was informed that the Respondent's external forensic IT consultants had determined, the only way that the Claimant could have accessed MR Voskou's emails were either by using his username and password or by an administrator of the system giving access to his 35 mailbox. The administrator was only authorised to provide access to Mr Voskou or Ian Goodhew.
30. At the meeting, it was confirmed by the Claimant that:
 - (a) she no longer had access to Mr Voskou's emails from 25 July 2022;

(b) in October 2022, Mr Voskou's inbox 'all of a sudden' appeared in her inbox, giving her full access. She did not make anyone aware that she regained full access to MR Voskou's inbox, although she was aware that Mr Voskou had restricted access to everyone and that he did not specifically request or authorise the Claimant to have access to his inbox;

(c) she did not find it strange to have access to Mr Voskou's inbox again, although she was aware of point 20; (b) above;

(d). she confirmed that she had access to confidential information and had accessed Mr Voskou's emails to print out an email concerning a former employee of the firm; and

(e). she confirmed that she had full access to Mr Voskou's emails but does not remember what other confidential emails she saw and/or read at the time which included documents subject to legal professional privilege.

31. Following an investigation, the respondent was satisfied that the claimant had acted dishonestly and was dismissed by the Respondent for gross misconduct, without notice, on 15 January 2024 with immediate effect. She was to be paid any outstanding salary and any other payments, including accrued but untaken holiday pay in accordance with the Respondent's contractual payment arrangement. Given the nature of the dismissal, the claimant was not entitled to a notice, nor a payment in lieu of notice.

32. On 17 January 2024, the claimant sent an email to the Respondent stating that the reason behind her dismissal was due to her personal matter with Mr Voskou, and that he had 'planned' to dismiss her for a considerable time. The claimant asked to appeal the outcome of the disciplinary meeting.

33. On 23 January 2024, a letter was sent to the Claimant by Miss Cenolli, inviting her to an appeal meeting on 26 January 2024 with Zoe Lidster, and an independent HR Consultant.

34. Present at the meeting were the Claimant and Zoe Lidster. The Claimant was taken through each of her points raised in her email dated 17 January 2024 and was given an opportunity to put forward her appeal. Miss Lidster informed the Claimant that she will carry out her own independent investigation and will inform the Claimant of the outcome of the appeal.

35. The Claimant was sent a letter on 6 February 2024 by Zoe Lidster, confirming the outcome of the appeal meeting as summary dismissal. Zoe Lidster provided the reasons behind her decision as being adverse to her in respect of all of the issues investigated

36. Ms Lidster Confirmed that the allegation that the Claimant accessed Mr Voskou's email account without his approval or knowledge had been determined against her and it is my finding that given the circumstances between the two it would have been obvious to her that what she was doing was inherently wrong.

37. Further, it has been alleged and for reasons I explain later in this judgment, I find that the Claimant used this access for personal gain, including accessing company banking information, printing sensitive and privileged information in regard to a former employee and reading emails between Mr Voskou and his solicitors that was subject to Legal professional privilege. The Claimant further confirmed at the disciplinary meeting that she had printed out an email concerning the former employee to read “later as I was in the rush to leave the office that day”. This email, which was again confidential, had been accessed and printed out without Mr Voskou’s or the Respondent’s information or authorisation.
38. There was an investigation which I find to have been properly executed. The Claimant was informed that she had the right to be accompanied by a colleague or a trade union representative. That investigation led a series of findings which I find reasonable for the respondent to have reached.

Automatic unfair dismissal and protected disclosure

39. In terms of the evidence that I have read and heard, my finding is that there has been no qualifying disclosure, or at least one that could be said to be as defined by Section 44B Employment Rights Act 1996. In cross examination, Miss Wheeler took the claimant to her witness statement when asking her for evidence of the qualifying disclosures that she relies upon for her claim. The claimant indicated that she did not make a protected disclosure. The claimant said that she was gathering evidence and had intended to make a disclosure. Miss Wheeler went on to submit correctly that the law makes clear that an intention to make a disclosure an investigation of a matter which could amount to a protected disclosure is not a protected disclosure. In order to have a protected disclosure, you need to make a disclosure and that disclosure needs to be a qualifying disclosure. Therefore. It is my finding that there has been no qualifying disclosure and therefore the claim of automatic unfair dismissal must fail..

Unfair dismissal and wrongful dismissal

40. Section 98(4) of the Employment Rights Act, sets out the reasons that can justify a fair dismissal. Misconduct is one of them. Counsel were correct to point me to the very well-known case of Birchall which sets out the test for understanding whether or not a dismissal is fair. Miss Wheeler described the range of reasonable responses test which is similarly well-known.
41. One thing that was not been pointed out is that it is that In misconduct cases, a dismissal will be deemed to be will be a fair one if the if the information relied

upon by the employer is subsequently shown to be incorrect. This is relevant to the decision of Mr. Cenolli to dismiss the claimant. This is because the claimant raises concerns about the quality of the information received from CYFOR. While it is not the case that here that what CYFOR has said is incorrect I make this point because of the reliance placed on the evidence by the claimant. However, it is my finding that Miss Cenolli was entirely justified in relying on the information received from both CYFOR and Share IT in order to reach her view that the claimant had accessed Mr. Voskou's e-mail account in the absence of administrator intervention. I find the respondent acted reasonably in finding the claimant had committed an act of gross misconduct in the way that it did.

42. Further, I find that the reason behind the claimant's interrogation of the e-mail account was due to the breakdown in relationship between the between her and her husband and had nothing to do with the with what the claimant now says are her concerns about the conduct alleged against Mr. Voskou by the female employee. This is evidenced by the content of the document contained at pages 220-251 of the bundle which relate to the commercial dealings of the Respondent and includes passages of communications between the respondent and a bank and in my view displays a discloses a breach of confidence on the claimant's part in her review emails of Mr. Voskou's correspondence with his matrimonial solicitor which can only have been reviewed in order to obtain an advantage in the matrimonial dispute between the two. In those circumstances, I find that the claimant's claims of unfair dismissal, breach of contract and wrongful dismissal automatic unfair dismissal must fail. Not only do I find that respondent had a fair reason to dismiss the claimant but that he conduct was such that it warranted a finding of gross misconduct.

Error in previous judgment

43. The parties will see that I have corrected an error contained in the previous judgment circulated to the parties in that it was not my finding that the claimant's claim of unfair dismissal failed because I have found that the dismissal was fair and reasonable given the circumstances that were presented to the claimant and not because the tribunal did not have jurisdiction to hear her claim. I apologise to the parties for this error.

**Employment Judge Forde
11 November 2024**

Judgment sent to the parties on:

3 December 2024

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For the Tribunal:

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