



EMPLOYMENT TRIBUNALS

Claimant: Mr G McBride

Respondent: Taylor Wimpey UK Limited

Heard at: Newcastle Employment Tribunal **On:** 24 February 2025
(by Cloud Video Platform)

Before: Employment Judge Smyth

Representation

Claimant: In person

Respondent: Ms Corby (Counsel)

JUDGMENT having been sent to the parties on 27 March 2025 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

1. The claimant was employed by the respondent as a forklift driver from 9 December 2019 until 27 June 2024. The claimant initiated Early Conciliation on 4 July 2024 and obtained an Early Conciliation certificate on 8 August 2024. His claim form was received by the Tribunal on 25 September 2024.
2. The parties agreed at the hearing that the respondent's name should be changed to Taylor Wimpey UK Limited.
3. The claimant claims that he was unfairly dismissed. Specifically, he claims that he was constructively dismissed within the meaning of section 95(1)(c) of the Employment Rights Act 1996:

95 Circumstances in which an employee is dismissed.

- (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—
 - (a) the contract under which he is employed is terminated by the employer (whether with or without notice),

- (b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or
 - (c) 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.
- 4. During the hearing the claimant abandoned his claim that he was bullied out of his job due to alleged cutbacks being made to the workforce.
- 5. The background to this claim concerns an incident that took place in June 2004. The respondent asserts that the incident took place on 24 June 2024. The claimant asserts that the incident took place about one week before this date. Nothing turns on the dispute concerning the precise date of the incident.
- 6. On the day in question, Jay Brewer, Adoptions Engineer, visited the site and witnesses the claimant, in his capacity as a forklift driver, loading plywood on to the back of a pick-up truck. This incident was captured by Mr Brewer's dashcam footage which was relied upon in evidence by the respondent.
- 7. The claimant accepts that he is forklift driver in the footage, and that he was loading plywood on to the back of a pick-up truck. The claimant claims that the driver of the pick-up truck had delivered the plywood to the wrong site. By the time the claimant and driver realised that this was the case, the claimant had already unloaded the plywood. What the dashcam footage captures, the claimant claims, is him reloading the plywood onto the pick-up truck.
- 8. The claimant resigned on 27 June 2024 with immediate effect. The claimant claims that he was present with Reece Sherratt, the site manager, when Mr Sherratt was informed by Steven Wall, a production manager, that if registration checks showed that the pick-up truck was not registered to a building supplier the claimant would be dismissed. The claimant claims that he had no choice but to resign in order to protect his pension and share incentive plan (SIP). The respondent denies that the claimant was told that he would be dismissed.
- 9. At the beginning of the hearing, the claimant confirmed that his email dated 12 February 2025 would stand as his witness statement. I checked the documents with the parties who both confirmed that they were ready to proceed.
- 10. I heard oral evidence from the claimant. The claimant confirmed that he had read the respondent's Disciplinary Policy. He accepted that he resigned at the 'Informal discussions' stage of the respondent's policy and that the 'Investigation' stage had not been reached. He accepted that Mr Sherratt had sought to persuade him not to resign and to await the outcome of any investigation. The claimant further accepted that Mr

Sherratt did not accuse him of stealing plywood at any time and therefore the first line in section 8.2 of the claim form is incorrect. The claimant accepted that the alleged telephone call between Mr Sherratt and Mr Wall is the only occasion he claims there was any reference to him potentially being dismissed.

11. I heard oral evidence from Mr Wall and Mr Sherratt. Mr Wall denied that he discussed the claimant's future during a telephone call with Mr Sherratt on 26 June 2024. Mr Sherratt denied that the claimant was standing next to him while he had a telephone discussion with Mr Wall.
12. I heard submissions from Ms Corby and the claimant.
13. I find it significant that the claimant failed to include the sole reference to him potentially being dismissed, made allegedly by Mr Wall in telephone conversation with Mr Sherratt, in his claim form. Instead, this was raised for the first time by the claimant in his witness statement dated 12 February 2025.
14. The claimant attributes this discrepancy to issues with his memory arising from his age and the fact that he is not legally trained. I do not accept this. The alleged telephone call between Mr Wall and Mr Sherratt and the warning that the claimant would be sacked goes to the core of the claimant's claim. There is no medical evidence before me to explain why his age might have impacted his ability to accurately set out such a key detail, nor any other credible explanation as to why the key incident of the telephone call between Mr Wall and Mr Sherratt was not included in the claim form.
15. I have considered the respondent's disciplinary policy. The claimant accepts that he resigned while informal discussions had taken place and before an investigation had been instigated. I find that Mr Sherratt and Mr Wall are experienced managers who were acting in accordance with the respondent's disciplinary policy. I find it unlikely that Mr Wall would have deviated from the policy and informed the claimant that he would likely be sacked before an investigation had been commenced. In so finding I place weight on the coherence and consistency of the written and oral evidence of Mr Sherratt and Mr Wall.
16. I have considered the evidence in the round. I do not accept on the balance of probabilities that the claimant was present during a telephone conversation between Mr Sherratt and Mr Wall, during which Mr Wall informed Mr Sherratt of the potential for the claimant to be dismissed.
17. As I do not accept that the claimant was told that he would or would likely be dismissed, it follows that I do not accept that there was any undue pressure placed on the claimant before he resigned. Indeed, the

claimant accepts that Mr Sherratt went as far as to try and persuade the claimant not to resign.

18. For the foregoing reasons the claimant's claim for unlawful dismissal is dismissed.

EJ Smyth

Employment Judge Smyth

Date 11 March 2025