

THE INDUSTRIAL TRIBUNALS

CASE REF: 1105/19

CLAIMANT: Shauna McMorrow
RESPONDENT: Fermanagh and Omagh District Council

DECISION

The unanimous decision of the tribunal is that the claims of constructive unfair dismissal and of unlawful discrimination on the grounds of fixed term worker's status are dismissed.

CONSTITUTION OF TRIBUNAL

Vice President: Mr N Kelly
Members: Mr Wilfred Mitchell
Mr Brendan Heaney

APPEARANCES:

The claimant appeared in person but was represented for part of the hearing by Ms Pauline Breen.

The respondent was represented by Mr Oisín Friel, Barrister-at-Law, instructed by Worthingtons Solicitors.

BACKGROUND

1. The claimant had been employed by the respondent Council as a temporary clerical officer for approximately 23 months.
2. She had been employed on a series of fixed term contracts which had each lasted for one month. The respondent had intended to continue that arrangement and had offered the claimant continued employment on the same basis into October 2019.
3. The claimant had worked in the building control Department.
4. In September 2018, the claimant told the respondent Council that she had experienced difficulties with another member of staff and that she was not prepared to continue working within the building control Department.
5. The claimant asked to be moved to another post in the respondent Council. No such post was available.

6. The claimant elected to work for approximately a further two weeks until the end of her current contract on 1 October 2018 and then to leave.
7. The claimant lodged a tribunal claim alleging:
 - (i) Unfair dismissal.
 - (ii) Constructive unfair dismissal;
 - (iii) Fixed term worker discrimination.

That was refined to a claim of constructive unfair dismissal and fixed term worker documentation.

PROCEDURE

8. The ET1 lodged on 28 December 2018 had alleged unfair dismissal, in the alternative constructive unfair dismissal, and unlawful discrimination on the grounds of fixed term worker status.
9. The respondent Council lodged a response on 14 February 2019 which stated, inter alia, that the claimant had resigned.
10. A Case Management Discussion was held on 1 April 2019. The claimant appeared in person assisted by Ms Breen. The respondent was represented by Ms Buchanan of Worthingtons Solicitors. The claimant stated that she had been forced to resign. She stated that she had told the respondent that she could not work in the building control Department with another member of staff.
11. It was clear that the claimant was alleging constructive unfair dismissal rather than unfair dismissal. The issues had not been agreed but following discussion they were recorded by the tribunal as:
 - (i) Was the claimant constructively and unfairly dismissed contrary to the Employment Rights (Northern Ireland) Order 1996?*
 - (ii) Had the claimant been employed on a fixed-term contract as defined in Regulation 2 of the Fixed-Term Workers (Prevention of Less Favourable Treatment) Regulations 2002?*
 - (iii) If the answer to (ii) is yes, whether the claimant was treated less favourably contrary to Regulation 3(1) of those Regulations?*
 - (iv) Whether the alleged less favourable treatment can be justified on objective grounds in accordance with Regulation 3(3)(b) of those Regulations?"*
12. The record of the Case Management Discussion including that list of legal issues was sent to the parties, including the claimant, on 5 April 2019 and no objection was received by either party to those issues.

13. In that record, directions were given for the exchange of Notices and for the exchange of witness statements.
14. The claimant provided her own witness statement and a witness statement compiled by a Ms Sandra Ferguson. The respondent provided witness statements from Ms Claire McNabb, Ms Thelma Browne, Mr David Patton, Ms Frances McQuaid, Mr Gregory Young and Ms Joanne Virtue.
15. Those witness statements were to take the place of evidence-in-chief. Each witness, including the claimant, was to swear or affirm to tell the truth, adopt their previously exchanged witness statement as their entire evidence and to move immediately into cross-examination and brief re-examination.
16. In the event, Ms McNabb was not available for medical reasons. A medical report had been provided. The claimant agreed that there was no point in postponing the matter to allow Ms McNabb to give evidence. The matters covered in her witness statement were already covered by other witnesses and there was no significant disagreement between her recollection of events and that of the claimant. The hearing therefore proceeded without Ms McNabb's evidence.
17. Ms Thelma Browne was unavailable until the fourth day of the hearing. The evidence had concluded at the end of the second day and the claimant confirmed that she had no questions to put to Ms Browne in cross-examination. Therefore the hearing proceeded without calling Ms Browne to give evidence.
18. The claimant's only witness, Ms Ferguson, did not attend to swear or affirm and to adopt her witness statement as evidence. She was therefore not cross-examined. No medical evidence was produced to explain her absence.
19. Witness statements which are not sworn and which are not subject to cross-examination can be afforded very little, if any, weight. This was not an issue in relation to the statement of Ms McNabb which did not raise any particular issue of controversy or the witness statement of Ms Browne where the claimant had indicated that she had no questions to put to Ms Browne. However the witness statement of Ms Ferguson had raised several matters which were not corroborated elsewhere and upon which the claimant had sought to rely.
20. The tribunal finds it disappointing that Ms Ferguson, without the production of medical evidence, did not attend to swear or affirm to her statement and to be cross-examined.

RELEVANT LAW

Constructive Unfair Dismissal

21. In ***London Borough of Waltham Forest v Omilaju [2005] IRLR 35***, the Court of Appeal (GB) set out the basic propositions of law relating to constructive dismissal. It stated that they were:-

“1. *The test for constructive dismissal is whether the employers' actions or conduct amounted to a repudiatory breach of the contract of*

employment: **Western Excavating (ECC) Ltd v Sharp [1998] IRLR 27.**

2. *It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: see, for example, **Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, 464 (Lord Nicholls) and 468 (Lord Steyn).** I shall refer to this as ‘the implied term of trust and confidence’.*
3. *Any breach of the implied term of trust and confidence will amount to a repudiation of the contract; see, for example, per Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347; 350.** The very essence of the breach of the implied term is that it is ‘calculated or likely to destroy or seriously damage the relationship’.*
4. *The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in **Malik** at p464, the conduct relied on as constituting the breach must “impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer”.*
5. *A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para 480 in Harvey on Industrial Relations and Employment Law –*

‘Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify him taking that action, but when viewed against the background of such incidents, it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the ‘last straw’ which causes the employee to terminate a deteriorating relationship’.”

22. The Court also stated:

“Although the final straw may be relatively insignificant, it must not be utterly trivial. The principle that the law is not concerned with very small things (more elegantly expressed in the maxim “de minimis non curat lex”) is of general application.”

23. The Court went on to state:

“The question specifically raised by this appeal is: What is the necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell LJ stated that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind

of case mentioned in Woods at page 351 where Browne-Wilkinson J referred to the employer who, stopping short of an actual breach of contract, squeezes out an employee by making the employee's life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant."

The Court went on to state:

"Moreover an entirely innocuous act on the part of an employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective"

24. In **Brown v Merchant Ferries Ltd [1998] IRLR 682**, the Northern Ireland Court of Appeal said that although the correct approach in constructive dismissal cases was to ask whether the employer had been in breach of contract and not to ask whether the employer had simply acted unreasonably; if the employer's conduct is seriously unreasonable, that may provide sufficient evidence that there has been a breach of contract.

Unfair dismissal

To ground a successful claim, a constructive dismissal must, of course, also be unfair.

25. Article 130 of the Employment Rights (Northern Ireland) Order 1996 provides:-

"130-(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

- (a) the reason (or if more than one, the principal reason) for the dismissal and*
- (b) that is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(2) a reason falls within this paragraph if it –

- (b) relates to the conduct of the employee,*

- (4) *where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
- (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and*
- (b) *shall be determined in accordance with equity and the substantial merits of the case."*

Fixed Term Worker Discrimination

26. 3.- (1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee –
- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.
- ...
- (3) The right conferred by paragraph (1) applies only if –
- (a) the treatment is on the ground that the employee is a fixed-term employee, and
- (b) the treatment is not justified on objective grounds.
- (4) Paragraph (3)(b) is subject to regulation 4.

Objective Justification

- 4.- (1) Where a fixed-term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of his contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.
- (2) Paragraph (1) is without prejudice to the generality of regulation 3(3)(b).
27. It was not in dispute that the relevant contracts were fixed term contracts for the purposes of the Regulations as defined in Regulation 1. It was also not in dispute that the claimant had been a fixed term employee at the relevant times as defined in that Regulation.

28. As indicated, inter alia, by the EAT in the *Manchester College v Cocliff [JKEAT/0035/10/CA]*, a tribunal has to adopt a stepped approach to the question of alleged unlawful discrimination on the ground of fixed term worker status. Firstly, the tribunal must consider whether the claimant and the named comparator were engaged on the same or broadly similar work. That issue has been conceded in the present case. Secondly the tribunal must consider whether the alleged less favourable treatment had in fact occurred. Thirdly the tribunal must consider whether any such less favourable treatment had been on the ground that the claimant had been a fixed term employee. Fourthly the tribunal must then consider whether if so the treatment had been justified on objective grounds.

RELEVANT FINDINGS OF FACT

29. The claimant worked for a number of summers in the Marble Arch Caves in the period between 2007 and 2010 on a casual basis. She had also worked in 2016 for a period of six months.
30. The claimant worked in the Funding and Investment Branch of the respondent Council for a brief period immediately after her last day of casual employment.
31. The claimant commenced work as a temporary clerical officer in the building control Department on 4 November 2016. She was employed on a series of monthly fixed term contracts which were renewed each month until the final contract expired on 1 October 2018.
32. The claimant was not legally represented. Her ET1 lodged on 28 December 2018 alleged unfair dismissal and in the alternative constructive unfair dismissal. Those claims were totally inconsistent. The claimant stated in her ET1 that:

"I believe it was the employer that terminated the contract without following the proper procedure. Fermanagh and Omagh District Council terminated my contract without following proper protocol, by failing to follow any of these steps –"

At a later point in the same ET1 the claimant stated:

"I believe I had no choice but to terminate my contract –"

33. The claimant also stated in her ET1 that:

"My understanding of my contract terms were that I was a permanent, temporary member of staff, on a rolling contract."

It is nevertheless clear that the claimant knew that she had not been in any sense a "permanent" employee or that she had in any sense been guaranteed or offered permanency. The contract had not been an automatically "rolling" contract and the claimant knew that. Each month the claimant was asked if she wanted to renew the contract and in each month the respondent Council decided whether or not to renew that contract. There had been no indication of permanency and yet the claimant put that forward in her ET1 as her belief. That was not an argument that was made at the tribunal.

34. The claimant made it clear that her claim of alleged unlawful discrimination on the ground of fixed term status related to the alleged treatment received by another employee (later identified as Sandra Ferguson) when that employee had “reported the same concerns as I did about being bullied and harassed by the same individual”.
35. The respondent denied the claims and asserted that the claimant had resigned.
36. In the Case Management Discussion on 1 April 2019, the claimant accepted that she had resigned and that there was no claim of unfair dismissal. She was no longer alleging that the respondent Council had terminated her contract of employment. She was no longer alleging that there had been in any sense “permanency”. She clarified that the issue in relation to the unlawful discrimination on the ground of fixed term worker status was the treatment afforded to Ms Sandra Ferguson in relation to Ms Ferguson’s dispute with Ms Virtue.
37. In relation to the alleged constructive unfair dismissal, the claimant was putting forward the case that there had been a series of acts of “bullying and harassment” and unfair treatment which had culminated in incidents on 11 September 2018 which had in effect been a “final straw” prompting her decision to resign.
38. The claimant in her evidence to the tribunal made several allegations in relation to her treatment by the respondent Council and in particular in relation to her treatment by Ms Virtue. Those were put forward by the claimant as the basis for her argument that she had been forced to resign ultimately by the actions on 11 September 2018.
39. In essence, the claimant alleges that she had experienced difficulties from 2016 up to September 2018 with Ms Virtue.
40. Before turning to the specific allegations, the tribunal notes that the claimant at no point made any complaint whatsoever about Ms Virtue or about her treatment by the respondent Council before September 2018. Throughout this period she had been asked on a monthly basis whether she had been happy to continue with the renewal of her fixed term employment and had, on a monthly basis, asserted that she had been happy to do so. The claimant had had multiple occasions on which she could have lodged a complaint or could have lodged a grievance about the alleged actions of Ms Virtue or indeed the alleged actions of the respondent Council. She chose not to do so.
41. The claimant asserts in evidence that throughout this period she had just wanted to keep her head down and to avoid conflict. She stated that she had been worried that her contract might not be renewed. Having observed the parties giving evidence and having examined the documentation, the tribunal does not accept that evidence from the claimant.
42. In particular, there was a substantial amount of documentary evidence relating to texts and social media exchanges between the claimant and Ms Virtue throughout the period up to July 2018. That documentary evidence indicated a friendly and open relationship with no problems whatsoever. When cross-examined the claimant stated that she had worked to maintain a “working relationship” but stressed that she had never attended any social function outside working hours with

Ms Virtue. It may or may be the case that the claimant had not attended any such social function with Ms Virtue. It is nevertheless clear from the content of the texts and social media documentation that the relationship between the claimant and Ms Virtue had not been restricted to working matters. The claimant and Ms Virtue had freely discussed various matters such as the weather, health, families and mutual acquaintances. The only inference that the tribunal can reasonably draw from that documentation is that the claimant and Ms Virtue had been friends throughout the period up to July 2018. That is simply not consistent with the claimant's evidence that she had experienced difficulties throughout, that she had been afraid to complain throughout and that all of this had built up to a climax in August/September 2018.

43. Looking at the specific allegations made by the claimant in relation to the period up to September 2018, the claimant made an allegation that Ms Virtue had used the term "cutty" when addressing the claimant. She stated in her statement that:

"From the start of my time in the office, she also referred to me mostly as "cutty"."

44. The term "cutty" is a colloquialism which is used commonly in Fermanagh and parts of Tyrone to refer to females or possibly to younger females. It is not a term of abuse. The claimant accepted in cross-examination, and it was the evidence given by other witnesses on behalf of the respondent that Ms Virtue had used that term commonly and in relation to a range of people. The claimant also accepted, in cross-examination that Ms Virtue had also frequently referred to her by name.
45. When challenged in cross-examination, the claimant's evidence in relation to this allegation changed slightly. She alleged that when this term was used by Ms Virtue in relation to her it had been used in a particular "tone". The tribunal does not accept this evidence, having listened to the parties. The tribunal does not accept that the claimant, as she now alleges found this term embarrassing or offensive. It does not accept that it would have been reasonable for the claimant to have done so in any event. This was a term which Ms Virtue had used widely and unthinkingly in relation to several individuals. It was no more than a simple colloquialism and it was not something which had been said with an intention to give offence or in any particular derogatory tone. It had not been something to which any person could reasonably take offence.
46. It is also notable that, despite the claimant's evidence in respect of this particular allegation, the allegation is not mentioned anywhere in the ET1 or indeed in the interlocutory process. If as the claimant now asserts this was a particular matter to which she had taken offence, that would have been raised in the claim form or in the interlocutory process and it was not so raised.
47. The claimant had been working in the building control Department with Ms Virtue and another part-time member of staff Ms Slevin. Ms Virtue, and Ms Slevin when present, were the senior members of clerical staff with significant experience. The claimant had been in effect the office junior and had been openly and clearly engaged on a temporary basis. The claimant now alleges that Ms Virtue had "bullied and harassed" the claimant when she had on occasion done items of work herself without, according to the claimant, training the claimant in how to perform those roles. The claimant alleged in particular that:

"Ms Virtue herself was coming to work at 7.30 am, leaving some nights at 7.00 pm."

48. The claimant alleged that this had been done to avoid sharing work with the claimant and to avoid teaching the claimant how to perform that work. She stated that there would have been "no need for her to do these unacceptable hours".
49. The allegation in the claimant's witness statement that Ms Virtue had been coming to work at "7.30 am" and leaving some nights at "7.00 pm" was misleading and the tribunal concludes that it was deliberately misleading. The un rebutted evidence of Ms Virtue was that the Council Offices were not even open until 8.00 am in the morning. In any event, Ms Virtue had the responsibility of leaving her children to school each morning and would not have attended, even if the offices had been open, at 7.30 am. Nevertheless the claimant asserted in her evidence that Ms Virtue had attended at 7.30 am and the inference was that she had done so on a daily basis or at least regularly. The claimant also asserted that Ms Virtue had worked on some evenings until 7.00 pm. That would have been to accommodate Council meetings in relation to planning and would have been cleared in advance by Mr Young. Given Ms Virtue's experience and expertise in these matters that would have been entirely proper. It would not have been feasible or reasonable in any sense for the claimant to have been tasked with working late in this respect given her lack of experience and her temporary status.
50. Nevertheless the claimant seeks to elevate these matters to an allegation of "bullying and harassment". Alleging that a senior colleague is hardworking is a peculiar allegation of bullying and harassment. The tribunal does not accept that allegation.
51. Another allegation was that in or around the summer of 2018, on one occasion, Ms Virtue had taken some documents from the claimant's in-basket after the claimant had left the office for the day and that Ms Virtue had stayed until after 7.00 pm to complete those documents. The work of the building control Department had been subject to time pressures both in relation to applications for building control and in relation to pressures from the Council. The fact that Ms Virtue, as the senior clerical officer in the Department, took work from the claimant's in-tray, after the claimant had left work, leaving that particular work uncompleted, could not, on any reasonable interpretation, amount to bullying and harassment. This had been no more than the actions of a hardworking and conscientious senior member of staff.
52. The claimant alleges that a new receipting system had been introduced in June 2018 and training had been arranged. The claimant had been there for two out of what she stated had been three training sessions. She stated that she had offered to cover the telephones in the office during the time of the third training session. That had been her decision. Even if there had been a third training session, it is difficult to see how that could be elevated into an allegation of bullying or harassment or indeed an allegation of anything improper. The claimant alleges that it had been planned that Ms Virtue would have given the claimant training at a later date. However since the claimant left shortly thereafter, it is difficult, even on the claimant's evidence, to see the basis of any allegation of unlawful discrimination or unreasonable behaviour.

53. The evidence from Ms Virtue was that there had been no third training session. There had been two sessions and that Ms McMorrow had not offered to cover the telephones as those telephones had been covered during those training sessions by arrangements with the Omagh office. The tribunal prefers the evidence of the respondent that the same amount of training had been provided to the claimant as to other members of staff.
54. The claimant alleged that she had been excluded from the team building in June 2018. However it appears to be the case that the claimant had been tasked to cover the work of the office during the day of that workshop together with a permanent member of staff Ms Shaw. It was therefore clear and the claimant accepted, that neither the claimant nor Ms Shaw, a permanent member of staff, had been invited on the workshop. The work of the building control Department could not have been shut down on that day. Somebody needed to cover the work of the office and since both the claimant and Ms Shaw had been instructed to do so, it is difficult to see how that decision could be presented as either unreasonable behaviour or bullying or harassment. It is also clear that that particular workshop had been put in place to deal with a particular recommendation arising from a grievance placed by a senior member of staff and that there had been no particular need to invite the claimant in any event to it.
55. The claimant alleged that in July/August 2018, she had been given a particular letter to type up on headed notepaper. That had been a letter for a councillor. The claimant accepted that Mr Young had asked both Ms Virtue and the claimant to attend to this. Ms Virtue had attended to this matter when the claimant had been absent from the office. It is difficult for this tribunal to comprehend why the claimant states that she felt offended by Ms Virtue's actions in this regard. Ms Virtue had been the senior and experienced clerical officer in the building control Department. She had been asked to do so something and she had done it. There had been a particular urgency attached to this task and it was important that it had been dealt with quickly. The claimant had been absent. It is impossible to elevate this matter to unreasonable conduct or bullying/harassment.
56. The claimant also alleges that during August 2018, when Ms Virtue had been absent for three weeks on annual leave, Ms Virtue had asked Ms Slevin, who would have been available for part of that time, to carry out certain functions and also that she had asked a female surveyor to do so. It seems clear that Mr Young, Mr Patton and Ms Virtue had concerns about the claimant's ability to perform the full range of her functions competently and it does not appear to the tribunal to have been either unreasonable or bullying/harassment for Ms Virtue to make arrangements during her period of annual leave for work to be covered in that manner.
57. The claimant also alleges that in August 2018 certain files had been "pulled" for the claimant to work on. The claimant complained that Ms Virtue had done so "despite having no more seniority over me than years in the job". The amount of years in the job and the amount of experience implicit in that length of service is inherent in the concept of seniority. It appears the claimant had significant difficulty in accepting that she had been the junior and temporary employee in that office and that Ms Virtue and Ms Slevin had been the more senior experienced employees. Again there is nothing in this that the tribunal can regard as either unreasonable or bullying/harassment.

58. In short, the tribunal does not accept the claimant's evidence in relation to the period up to September 2018. There had been no unreasonable behaviour or anything which could conceivably have amounted to bullying/harassment.

September 2018

59. On 11 September 2018, Mr Young saw Ms Virtue crying and being comforted by another member of staff, Ms Slevin. He called Ms Virtue into his office and asked her what was wrong. Ms Virtue told him that the claimant had either not been speaking to her or had been very short with her. Ms Virtue told him that the claimant had become very moody and had been isolating her from conversations with her staff. Ms Virtue stated that she had done nothing to the claimant and had always helped with her work.
60. Mr Young then called the claimant into his office and explained what had happened with Ms Virtue. The claimant told Mr Young that Ms Virtue had been difficult to work with. Mr Young asked her to explain that remark. The claimant accepts that she did not give any explanation of that allegation. Mr Young told the claimant that he would not tolerate staff not speaking to each other and that he had expected all staff to be respectful to each other and, at a minimum, to communicate in a work capacity. He stated that the claimant and Ms Virtue had always had a good relationship and that he found it difficult to understand where this change of attitude had come from.
61. Mr Young then invited Ms Virtue into the meeting with the claimant. He told both that he wanted the issue sorted and that he would not tolerate an atmosphere of people not talking to each other within the office. Ms Virtue asked the claimant what it was that she was supposed to have done to the claimant. She stated that that could be discussed if the claimant told her what it was. The claimant still did not give any reason, but said again that Ms Virtue had been difficult to work with. The claimant was asked again by Mr Young to explain her remark and she made a brief reference to the receipting system and to a single mistake that Ms Virtue had pointed out to her.
62. Mr Young asked the claimant and Ms Virtue to continue the discussion to try to resolve the issue. The two left Mr Young's office and continued the discussion.
63. The tribunal notes that had not been a situation where the claimant had brought an allegation of alleged bullying/harassment of her volition to Mr Young. This arose from a situation where Mr Young had observed Ms Virtue in tears and had then spoken to Ms Virtue and subsequently to the claimant. It had only been when the claimant had been asked to explain what had happened that she alleged, and for the first time, that Ms Virtue had been difficult to work with. She did not give any explanation and she did not use the words "bullying" or "harassment".
64. In any event, the claimant and Ms Virtue continued with the discussion immediately after the meeting in Mr Young's office. Ms Virtue continued to ask the claimant what she had done wrong. The claimant continued to say simply that Ms Virtue had been difficult to work with and she did not give any further reasons for this statement. The claimant finished the discussion by telling Ms Virtue that she would only talk to Ms Virtue in a work capacity.

65. It is clear that the claimant's attitude to Ms Virtue changed drastically during the period when Ms Virtue had been absent on holiday for three weeks in August 2018. Up to that point, it appears that the claimant and Ms Virtue had had a good relationship. The tribunal is unable to understand why this change came about. However, for the purpose of these claims the tribunal does not have to speculate on that matter. Ms Virtue had been on holiday during those three weeks, so she could not have been bullying or harassing the claimant.
66. The claimant's account of her meeting with Mr Young on 11 September 2018 is difficult to understand. The claimant appears to believe that it had been up to Mr Young to extract from the claimant or possibly from other sources why in detail the claimant suddenly had been alleging that Ms Virtue had been difficult to work with. The claimant had been given multiple opportunities to provide examples and to provide an explanation. Apart from two brief examples, she had failed to do so. The claimant asserts that she had been stressed and inarticulate and that she had been unable to do so. The claimant may have been initially caught by surprise by Mr Young approaching her after finding Ms Virtue in tears. Nevertheless, after that initial surprise, the claimant would have been capable of providing full reasons, if such reasons had existed. Furthermore, she had continued the conversation with Ms Virtue in Mr Young's office and afterwards and had still failed to provide any convincing reasons or explanation.
67. On the next day, 12 September 2018, the claimant went to the HR Department to lodge an informal complaint. It had been the claimant's choice to make her complaint informal rather than formal and the claimant had had at all relevant times access to the DAW policy and indeed had a hard copy of that policy at home.
68. The claimant asked to be moved to a different Department and stated that if that was not possible, she would not be able to continue working in the building control Department. Ms McNabb stressed to her there would still be work available in that office after September if the claimant wanted it. The claimant declined that offer.
69. In that meeting on 12 September 2018, the claimant first raised this issue of being called "cutty" and first raised the issue of been made to feel "junior". As indicated above, the tribunal is content that the term "cutty" is simply a colloquialism and had not been used with any adverse intent. Ms Virtue had used this term in relation to several staff as part of ordinary speech and no-one could have reasonably taken offence. The tribunal is also content that at all relevant times the claimant had been the office junior.
70. The claimant gave no other examples of the alleged difficulty with working with Ms Virtue.
71. The claimant again approached Mr Young later on 12 September 2018. The claimant asked Mr Young if she could discuss the conversation the previous day. Mr Young agreed. She again repeated that Ms Virtue had been difficult to work with but did not give any reasons. Mr Young told the claimant that it needed to be sorted out and that it appeared to be very petty with no genuine reasons being provided by the claimant. The claimant agreed that it was petty. She stated that the relationship between her and Ms Virtue would be in a work capacity only from then on. Mr Young stated that that was fine. The claimant left Mr Young's office.

72. The evidence of the respondent was that there had been no suitable vacancies at that time for the claimant. That evidence has not been challenged by the claimant.
73. Later again on 12 September 2018, Mr Young called the client into his office and confirmed to her that Ms McNabb had checked the availability of posts and that there were no other suitable positions within the Council to which the claimant could be relocated. The claimant told Mr Young that her contract was up at the end of September 2018 and that she would stick out until then. Mr Young agreed to that.

Exit Interview

74. An exit interview was held on 27 September 2018. Mr Young had initially arranged to meet the claimant to wish her well on her departure. He was leaving on annual leave on the next day, 28 September 2018 and therefore had to meet the claimant on that date.
75. Mr Young invited Mr Patton to join the claimant and asked him to conduct the exit interview.
76. That interview involved the completion of a checklist which largely concerned the return of Council property. That form had been pre-printed by Mr Young which was his practice in relation to interviews such as return from sick leave interviews.
77. The claimant, particularly in the interlocutory process, had accused, in somewhat strident terms, the Council of "fraudulently" completing that exit interview form. The tribunal is content that neither Mr Patton nor Mr Young or anyone else in the Council had intended to do so. This form had simply been pre-typed pending signature in the normal way.
78. The only relevant part of that exit interview checklist was a section under the heading "reason for leaving". That stated:

"End of temporary contract and Shauna had expressed an interest to work in a different area of Council should a post become available which there currently is not."
79. The claimant signed that exit interview form together with Mr Patton. She did not seek to amend or to add to that form before signing it.
80. The claimant stated in evidence that she had been put under pressure to sign that form but was entirely unable to explain the nature of that pressure. It is difficult to see how or why the claimant would have signed that form if she had not been content to do so. She had already decided to leave and could not have been worried about implications for her job at that stage.

Sandra Ferguson and Ms Virtue

81. The claimant sought to compare the treatment which she had received which the treatment that Ms Ferguson had received. That concerned an earlier dispute between Ms Ferguson and Ms Virtue.

82. There is a limited amount of evidence in relation to this matter, particularly since Ms Ferguson has chosen, for whatever reason, not to give evidence before this tribunal.
83. Nevertheless, it is clear to the tribunal that these two incidents had been entirely different in magnitude and in content.
84. The dispute between Ms Ferguson and Ms Virtue had been one in which both parties had been openly and clearly accusing the other of harassment and bullying. It had also been a dispute where clear and detailed allegations had been given. It was entirely unlike the present case where the claimant, who had been asked to explain why Ms Virtue had been in tears, had simply said that Ms Virtue had been difficult to work with but had refused to give any examples on 11 September 2018 and on 12 September 2018 gave only two relatively trivial examples. In the present case, the claimant had not used the term "bullying and harassment" until the present litigation.
85. Furthermore, there had been an available post or location elsewhere for Ms Ferguson to be relocated. That is not the situation in the present case. There had been no alternative post available for the claimant. The respondent Council had sought to persuade the claimant to remain where she was. The claimant had told Ms Young and Ms Virtue that her relationship with Ms Virtue could continue on a working relationship. Ms Virtue and Mr Young had been content with that proposal. That is entirely different from the situation between Ms Ferguson and Ms Virtue.
86. The present case had been a relatively low level spat between two employees which had been resolved on an informal level. It was in no way as heated and certainly not as detailed and specific as the dispute between Ms Ferguson and Ms Virtue.

DECISION

Constructive Unfair Dismissal

87. There had been no fundamental breach of contract. Mr Young had acted properly when he saw that Ms Virtue had been crying and upset. He had spoken to both Ms Virtue and the claimant. He had stressed the need for employees to treat each other with respect. He had been given no explanation by the claimant of her allegation that Ms Virtue had been difficulty to work with.
88. The claimant had, the next day, raised an informal complaint. She did not raise a formal complaint which would have triggered a formal investigation. She wanted a move to another Department and, if that was not possible, she wanted to leave.
89. The tribunal does not accept the claimant's complaints about the exit interview, but even if it had done so, that interview post-dated her resignation and is irrelevant to the constructive unfair dismissal claim.
90. The claimant had agreed to communicate with Ms Virtue on a working basis. She had been offered continuing employment. She had refused that offer. She had been friends with Ms Virtue for a considerable period and could have continued to

work with her, as she did for the last two weeks of employment, at least until a vacancy became available. There had been no breach of any specific term or of the implied term of trust and confidence.

91. The claimant was not constructively and unfairly dismissed and that claim is dismissed. She had not been entitled to rescind her contract as a result of the actions of the respondent.

Fixed Term Work Discrimination

92. That claim is based on a comparison between the claimant's complaint and the dispute some time earlier between Ms Ferguson and Ms Virtue.

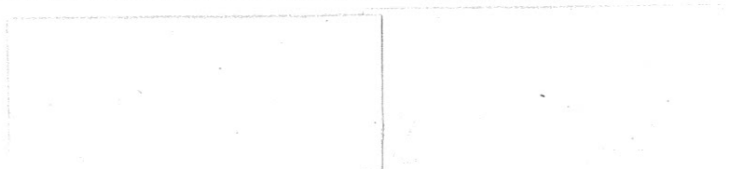
93. As indicated above, those situations had been significantly different. The claimant's differences with Ms Virtue had been relatively low level and ill defined. There had been no vacant post available for relocation. The claimant had decided to leave. Mediation would have been a pointless exercise.

The two situations cannot be properly compared for the purposes of an allegation of unlawful discrimination. The claimant had not been less favourably treated than Ms Ferguson.

94. Even if the situations could be properly compared, there was no evidence, even on a prima facie level, that the treatment of the claimant had had anything to do with her fixed term status. She had chosen to refuse the offer of continued employment with the respondent. She had chosen to leave. No-one had forced or encouraged her to do so.

95. The claim of fixed term worker discrimination is dismissed.

Vice President:



Date and place of hearing: 2, 3 and 4 September 2019, Belfast.

Date decision recorded in register and issued to parties: