



# EMPLOYMENT TRIBUNALS

**Claimant:**

Miss M Williams  
(formerly Mrs M Ramsey)

v

**Respondent:**

Step by Step Partnership  
Limited

**Heard at:** Reading

**On:** 7 February 2017

**Before:** Employment Judge Gumbiti-Zimuto

**Appearances**

**For the Claimant:** Mrs N Blyth (Lay representative)

**For the Respondent:** Mr T Brennan (Adviser – EEF)

**JUDGMENT** having been sent to the parties on 14 February 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. In a claim form presented on 8 January 2016, the claimant made a claim of unfair dismissal. The respondent resisted the claimant's complaint.
2. The issues in the case are whether or not the claimant was dismissed and if the claimant was dismissed, whether there was a fair reason for the claimant's dismissal.
3. The claimant gave evidence in support of her own case. The respondent relied on the evidence of Ms Deborah Daley, HR Adviser; Ms Naomi Saunders, Accommodation Service Co-ordinator; and Mr Luke O'Neill, Head of Client Services. All the witnesses gave evidence by referring to witness statements which were produced as their evidence-in-chief. I was also provided with a bundle of documents containing 437 pages of documents.
4. The respondent is a registered charity working with vulnerable people aged 11-25. It uses a structured combination of services which include accommodation, support, training-supported lodgings and drugs and alcohol counselling. It operates a numbers of foyers in the Aldershot, Basingstoke, Fareham, Gosport, Havant and Dorset areas which provide among other things accommodation and support services for young people. The respondent has approximately 100 employees and volunteers.

5. The claimant commenced employment with the YOU Trust ("YOU") on 1 July 2010. On 1 April 2015, the claimant's employment transferred to the respondent. At the time of the transfer, the claimant was employed as a support worker. During the claimant's employment with YOU, the claimant had also been working for an agency owned by YOU known as Premier Crew. Following the claimant's transfer to the respondent's employment, the claimant continued to carry out work for Premier Crew.
6. Soon after the transfer took place, arrangements were put in place for the claimant to attend induction training. The claimant did not attend on the date allocated. It was initially arranged that the claimant would receive training on 7, 8, 9 and 10 April. The claimant did not attend on these dates as she was unwell.
7. Attempts were made to arrange training for the claimant to take place on another occasion. The claimant's failure to attend the induction training and supervision session on that occasion was because it was being offered at Aldershot. The respondent was offering to reimburse the claimant's travel costs from Gosport, where the claimant lived, to Aldershot. However, the claimant would have had to pay the travel costs herself on the day to be reimbursed later. The claimant said that she needed this to be paid in advance. The claimant did not attend an induction training session with the respondent despite the respondent's efforts to arrange one for her.
8. During the claimant's employment with the respondent, the claimant did have two supervision sessions in the period from 1 April to 29 August. The claimant complains that the respondent failed to provide her supervision sessions in accordance with their stated aims. However, this should be viewed in the context where during the time that the claimant was an employee of the respondent from 1 April to 29 August, the claimant was off work for 84 days: 62 sick and 22 annual leave out of a possible 151 days. I am of the view that two supervision sessions was reasonable in those circumstances. When this was put to the claimant, I understood her to accept that was the situation as well.
9. On 13 June 2015, the claimant received a handwritten complaint from a service user. The claimant scanned the complaint and attached it to an email before sending it to Naomi Saunders. She copied it to all the staff team [p. 137]. Naomi Saunders replied to the claimant alone. In the email she tells the claimant to direct her complaints to a manager. Naomi Saunders asked the claimant to go through the complaints policy with a complainant and make sure that the process was clear. Soon after, the claimant replied to Naomi Saunders' email, again copying all staff, and saying that the reason the complaint was handwritten was because she could not see a copy of the complaint form online.
10. Naomi Saunders, responding to the claimant's further email, also replied copying it to all staff stating that there was no need for a form to be used if a service user felt the complaint is urgent. She stated that they can contact a staff member for advice or call a manager to contact the service user. Naomi Saunders was unhappy with the way that the claimant had handled

the issue of the complaint on 13 June and a few days later she spoke directly with the claimant about the matter.

11. A voice message was recorded on Sheldon McMullen's answer phone service. The recording was made on 22 May 2015 but only came to light on 16 June 2015. The recording appeared to be an unintentional recording of a conversation in which inappropriate language "for the environment in which we work"<sup>1</sup> was used. The claimant was the only female on duty at the time and it was thought by Sheldon McMullen and Naomi Saunders that the person speaking on the recording was the claimant. A decision was taken to deal with the incident of 13 June and the unintentional recording in a formal setting.
12. A letter was sent to the claimant asking her to attend an investigation meeting on 24 July 2015. The claimant was away on holiday from 28 June until 17 July so when the claimant returned to work on 23 July, she was unaware that a letter had been sent to her by recorded delivery and was awaiting collection at the post office.
13. The claimant received a telephone call from Deborah Daley whilst she was working her shift. Deborah Daley asked the claimant if she had received the letter. The claimant explained that she had not received the letter. The claimant was informed that a meeting had been arranged to take place the following day and it was agreed that the meeting would be postponed.
14. The claimant pressed Deborah Daley to tell her what the letter and the meeting concerned. Initially Deborah Daley asked the claimant to obtain a copy of the letter. However, Deborah Daley on being pressed by the claimant relented and explained the position to the claimant and then shortly afterwards sent the claimant by email a copy of the letter of 9 July which had been sent by post but had not been delivered to the claimant.
15. The claimant was upset by what she was told and was unable to continue working. She asked to be relieved. It took about two hours for the claimant to be relieved from duty. The claimant went home and was subsequently signed off sick. The claimant complained in her evidence that Deborah Daley should not have told her about the letter and the meeting until after the end of her shift. The claimant accepted that she had pressed Deborah Daley to tell her what was in the letter and had insisted on being told over the phone. Notwithstanding this, the claimant says that Deborah Daley was at fault in giving her the information that she had asked for.
16. The letter of 9 July had invited the claimant to an investigation meeting in which two allegations were to be discussed. The allegations were that she used inappropriate language and behaviours when discussing a person yet to be identified with a client of The Pines, Old Worthing Road, Basingstoke, Hampshire. This message was inadvertently left as a voicemail on another staff member's mobile phone on 22 May 2015. The second allegation was that the claimant had electronically forwarded a client's complaint letter to the staff team (and re-copied the team when the line manager had removed them from the original email thread).

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<sup>1</sup> Naomi Saunders' evidence

17. A new date was set for the disciplinary investigation meeting. The date set was 19 August. In the intervening period, it came to the attention of the respondent that during the time that the claimant was reporting to the respondent as off sick, she had been working shifts for YOU through the Premier Crew agency.
18. On 19 August, the claimant attended the investigation meeting accompanied by a Unison representative. The investigation meeting was chaired by Lyndon Webb. Deborah Daley was present as a note taker. During the meeting, it was made clear that the issue concerning the email exchange would not be taken any further. When the unintentional recording was discussed, the claimant denied that it was her voice on the tape. There was then a break in the meeting. When the meeting resumed, the claimant was asked if she had been working for another organisation while off sick. The claimant's response was to say that she had never been told that she could not work for another company and that she still worked for YOU and had never stopped working for them but denied that she had worked whilst she was off sick. The claimant asked when this allegation had come to light and was told that it was still under investigation.
19. The meeting came to a close. The intention was to further investigate the matter in which it was alleged that the claimant had been working whilst off sick. Following the meeting, the respondent made further enquiries including gaining the claimant's permission to contact YOU to provide details of the work the claimant did for YOU.
20. On 28 August, the claimant resigned her employment with immediate effect. The claimant's resignation letter read as follows:

“Resignation: Step by Step, Step Worker Role

I am writing to inform you that I am resigning from my step worker role at Step by Step with immediate effect. Please accept this as my formal letter of resignation and the termination of our contract. I feel that I am left with no choice but to resign in the light of the following:

- There has been a fundamental breach of contract as I have been subjected to undue, disproportionate and harsh treatment during the recent investigation into my conduct.
- There has been a serious breach of trust and confidence, as my employer you have acted in a manner, which damages my reputation and career prospects. You have made false allegations without the necessary preliminary investigations.
- The meeting I attended on 19<sup>th</sup> August 2015 was the ‘last straw’ as you have continued to question my ethics and standing within the organisation to colleagues and clients over a period of time since my TUPE transfer on 1<sup>st</sup> April 2015.
- I consider this to be a fundamental/unreasonable breach of the contract on your part and I will be sending separately a grievance into the issues that has led me to resign. I will want this to be heard as soon as possible.

I would be grateful if you could acknowledge this letter at the earliest available opportunity.”

21. The respondent told the claimant she was not required to work her notice period and paid her until 28 September 2015.
22. At the conclusion of the cross-examination of the claimant, I offered her the opportunity to summarise the evidence that she wanted me to consider as constituting the breach of contract in this case. The claimant told me the following.

“I was on my own. They all knew each other. I did not feel I could talk to anyone. I was new to this company. I was new to this company. I had not had good feedback about this company. They seemed more concerned about the furniture than they were about the young persons. I didn’t want to leave on bad terms.”
23. Section 95 of the Employment Rights Act 1996 provides that an employee is dismissed by her employer if the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer’s conduct. If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat herself as discharged from any further performance. If she does so, then she terminates the contract by reason of the employer’s conduct. She is constructively dismissed. The employee may leave at the instant without giving any notice at all or, alternatively, she may give notice and leave at the end of the notice. The conduct must be sufficiently serious to entitle her to leave at once. She must not wait too long or she will lose her right to treat herself as discharged. She will be regarded as having affirmed the contract.<sup>2</sup>
24. 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 calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
25. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
26. The test of whether there has been a breach of the implied term of trust and confidence is objective. 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"<sup>3</sup>.
27. 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. 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 his taking that action, but when viewed against a 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

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<sup>2</sup> Western Excavating (ECC) v Sharp [1978] 1QB 761

<sup>3</sup> Malik v Bank of Credit and Commerce International SA [1998] AC 20

deteriorating relationship..

28. I have come to the conclusion that the claimant was not dismissed in this case. I come to that conclusion for the following reasons.
29. The claimant says that there are instances of her raising issues relating to health and safety concerns for young people she supports. However, there is no evidence that this was the case so as to allow me to conclude that it contributed to a fundamental breach of contract by the respondent. The claimant complains that she was not given support by the respondent and refers to a failure to refer her to occupational health, a failure to carry out return to work interviews. The evidence of the respondent is that the claimant was given return to work interviews after her sickness absence period. I accept that was the case. There were return to work interviews. There is no evidence that the claimant requested a referral to occupational health for advice or gave evidence that established a need for such a referral.
30. The claimant complains that the respondent did not give her the support she needed after the transfer. The claimant says she did not have an induction. The claimant did not have an induction because she was ill when it was first arranged and failed to attend on that date and when it was rearranged she did not attend then either.
31. The claimant complains that she did not have supervisions - in the period from 1 April to 28 August, the claimant had two supervision sessions. In this period, when the claimant was off work for much of the time as set out earlier, two supervision sessions were in my view a reasonable return.
32. The claimant complains that she was subjected to "horrendous experiences" but failed to specify what happened that formed this horrendous experience. Other than being called to attend an investigation meeting that eventually took place on 19 August 2015, the claimant has identified nothing.
33. I have considered whether the way that the respondent raised the matters set out in the 9 July letter amounted to a breach of contract taken together with the way that the 19 August meeting was conducted. I am not satisfied that it has been shown that there was a breach of contract.
34. The claimant was asked to attend an investigation meeting at which issues of concern were to be discussed. It is clear that these were appropriate matters to discuss with the claimant. The meeting was an opportunity for the claimant to give an answer to the areas of concern and she did so.
35. One of the areas of concern as a result of the meeting resulted in the claimant being told that the matter was to be taken no further. There is no evidence of breach that this matter was discussed with the claimant.
36. There is no breach of contract because a further matter was raised at this meeting concerning the claimant working for another employer whilst reporting to the respondent as sick and being paid sick pay. This is an appropriate matter for enquiry and investigation by the respondent.

37. The claimant has not shown that there was a breach of contract by the respondent which entitled her to resign. The claimant was not dismissed. The claimant's complaint of unfair dismissal is not well founded and is dismissed.

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Employment Judge Gumbiti-Zimuto

Date: 20 February 2017

Reasons sent to the parties on

2 March 2017

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For the Tribunal office