



EMPLOYMENT TRIBUNALS

Claimant:

Mrs A Taylor

v

Respondent:

Aspire Defence Services Ltd
(ADSL)

Heard at:

Reading

On: 1, 2 and 3 March 2017

Before:

Employment Judge J Hill

Appearances

For the Claimant: Mr S Taylor (husband)

For the Respondent: Mr M Palmer (Counsel)

JUDGMENT

1. The claim of unfair dismissal fails and is dismissed.

REASONS

1. By a claim presented on 13 April 2016, the claimant asserted that she had been unfairly constructively dismissed from her employment which lasted from 6 January 2014 until 25 January 2016.
2. Constructive dismissal is where an employee resigns in circumstances where they assert there has been a serious breach of contract by the employer. There must be evidence that the employers, without reasonable and proper cause, have conducted themselves in a manner calculated or likely to destroy the relationship of trust and confidence between employee and employer: Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347.
3. The term which the claimant asserted had been breached was that of the implied term of mutual trust and confidence. The tribunal must address the question of this potential breach by viewing the evidence objectively as to whether that term has been breached.
4. If an employee resigns in response to either a specific breach or to a series of acts which taken together form that breach, the tribunal must decide was that the reason for the resignation. If it was the reason, the

tribunal must decide whether the employee resigned in good time or had waived or affirmed the breach.

5. I heard evidence from the claimant in person. For the respondent, I heard evidence from: WO1 Stephen Ward; Ms Jeanette Chambers, Ms Elizabeth Bevan; Ms Rebecca Lewis; Ms Lauraine Bolton and Mr Aidan Murphy. I had a bundle prepared by the respondent. In addition, the claimant provided two supplemental bundles.
6. The claimant was employed as an administrator with the respondent. The respondent's client was the Army. The Army prescribed the manner in which work was performed. The claimant worked with three other women as administrators. When she first started work in January 2014, the work was allocated on a pool basis. It was later changed on a zoned work basis. The claimant disliked this method of working.
7. The claimant was line managed by Beth Bevan who in turn was managed by Ms Lewis. Mr Ward had no line management control as he was from the Army.
8. Mr Ward said that he had a number of private conversations with the claimant about work or personal issues. She was the only one of the four women employed in the iHub team who required such intensive interaction.
9. As a result of one of these concerns, Ms Bevan suggested to Mr Ward that he keep a running diary of his interaction and observations of the claimant. This ran from March 2015 to June 2015 when the claimant went off sick. The claimant asserted that this was an illegal monitoring of her.
10. I find as a fact that it is a reasonable action by an employer, where they have an unexpected number of personal interactions in the way Mr Ward described, to keep a diary in order that they can monitor the performance and the problems of an employee.
11. In the year 2014, there were, as far as interactions with other employees were concerned, few concerns. Mrs Chambers and the claimant worked amicably together. Mrs Chambers noticed that towards the end of December, the claimant became withdrawn and her moods became more volatile; sometimes she would engage with her colleagues and sometimes not.
12. During 2015, the claimant's attitude to her colleagues became more pronounced and her colleagues began to find her difficult to deal with. Ms Bevan and Ms Lewis were conscious of problems with communications within the team.
13. On 29 May 2015, an incident occurred involving Mr Garung from the Army in which he sought work to be done by the iHub. The claimant considered that it was work that she should perform. Mrs Chambers interrupted her.

The interaction, the claimant said, was embarrassing; she considered that Ms Chambers' behaviour was insulting to her. The claimant sent an email to Mr Ward about this on 1 June copying it to Ms Bevan and Mrs Lewis.

14. Before Ms Bevan had the opportunity to read the email, she bumped into the claimant in the toilet and was made aware of the email. The claimant understood that Ms Bevan had proposed that there should be a meeting in order to deal with this specific issue which the claimant viewed as a grievance. Ms Bevan took it as the opportunity to deal with the more general problem of inter-team communications. She sent out an invitation to the team saying: *"Team meeting – The purpose of the meeting is to have a general team catch up and discuss any concerns you may have regarding the impending management and staff changes in iHub, etc, as Steve prepares to move on to pastures new"*.
15. The claimant expected the meeting to deal with practicalities of WO1 Ward's departure. I struggle to see how she could interpret the invitation so restrictively.
16. The claimant was unhappy that it appeared to deal with the matter that she thought was the grievance in a group meeting.
17. The meeting minutes, which are variously named 'notes' or 'minutes', make it clear that the purpose of the meeting was to solve the issues relating to interpersonal work relationships, amongst other things.
18. The claimant asserts this meeting was "disastrous" for her.
19. Ms Bevan, Mr Ward and Mrs Lewis were all present. Having made the introductions, they effectively acted as facilitators for the meeting to allow the members of the team to air their concerns and download. It clearly was a no holds barred meeting where all of the participants aired their criticisms of the others. The claimant dominated the meeting referring at great length and persistently to the allocation of work and her objection to the zoning process. This was despite Mr Ward advising that the decision how to manage the work was made at a rank much higher than him.
20. The claimant was the subject of a great deal of criticism. Finally, Ms Chambers said the claimant was jealous of her and tried to stab her in the back.
21. Ms Bevan, Ms Lewis and Mr Ward endeavoured to draw the meeting to a close and say that they must draw a line in the sand and parties must move on and work together appropriately.
22. The claimant stayed behind after the meeting, she said because she did not want to mix with the other three members of the team. She sought to engage with Ms Bevan, Ms Lewis and Mr Ward going over the same ground that she had already addressed at length in the meeting. Towards

the end, it was said to her that if she were not happy in her job, she should look for something else within Aspire.

23. The claimant is very critical of this conversation. I do not consider she has any justification for this criticism. It is apparent from reading the meeting minutes that there were serious problems between the four members of the team. The poor communication was impacting on the performance levels. If any one person was not prepared to give ground, the team would not work. It would be appropriate if that one person, who appeared on the face of the minutes to be the claimant, were to look outside the team to continue work. This was one way to stop the disruption within the team. To suggest this to the claimant was not unreasonable, given her attitude at the meeting.
24. The meeting of 3 June came about because of the email the claimant sent on 1 June. The claimant asserts that this email was an informal grievance. None of the management team viewed it as a grievance. Mr Ward said he had a word with Ms Chambers about her behaviour and discussed it and that was sufficient to address the work-related task identified. Ms Bevan and Ms Lewis viewed it as the opportunity to tackle a problem that was more broadly based but it was inherently a work-related issue.
25. I find as a fact that it was not a grievance falling within the grievance procedure; it dealt with a minor niggle in the ordinary working day. It was properly dealt with by Mr Ward as it impacted on the way in which the Army received the services from the respondent. It was not, and could not reasonably be, viewed as any form of grievance.
26. The claimant was distressed by what had occurred at the meeting on 3 June and was signed off sick with work-related stress from 4 June 2015. She did not return to work before her resignation on 25 January 2016.
27. On 16 June 2015, the claimant sent an email to Ms Bevan complaining about the events of 3 June 2015 asserting that (i) she had been bullied at the meeting by her colleague, Ms Chambers; and, that (ii) management had failed to deal with bullying in the meeting in an appropriate manner.
28. Ms Bevan forwarded the email to Ms Bolton from HR who treated it as a grievance. Mr Mullen was appointed to investigate the grievance.
29. In the meantime, Ms Bolton suggested to Ms Bevan that she ensure that the other members of the team who were present at the meeting on 3 June wrote a statement of their version of the events. Ms Bevan, herself, had already made some notes on 4 June about what had occurred. The description of the way in which the meeting was conducted broadly tallied between Ms Lewis, Ms Bevan, the three team members and Mr Ward. It did not tally with the description of how the meeting went given by the claimant.

30. As a result of this difference between what she said, and the agreement between all the others, the claimant asserts there had been tampering of evidence. She asserted that Ms Bevan instructed the team members how to draft their statements which she denied. She also asserted that Ms Bolton tampered with the notes made by Ms Bevan. Ms Bolton agreed that she did alter the heading; she set the notes out in a more formal way so that it included a heading that said 'Purpose of meeting', albeit it was already contained in the opening paragraph of the notes, and added a date in at a later date. She disputed absolutely that she in any way interfered with the content of the notes.
31. I find as a fact that there is no evidence that any single person together or separately interfered with the content of any statement made by any member of the iHub or with the notes prepared by Ms Bevan in relation this meeting.
32. The claimant provided additional written information for the grievance. She attended the first grievance meeting on 8 July 2015. She was not supported by a trade union representative at that meeting. Present at the meeting were the claimant, Mr Mullen and Ms Bolton. Ms Bolton and Mr Mullen together prepared some notes of that meeting. These appear not to have been served on the claimant before the outcome of the grievance.
33. It is apparent from reading those notes [184-188] that from the respondent's point of view, the claimant tried to take over the meeting rather than allowing Mr Mullen to run it as he wished. There is clear information that the claimant talked over Mr Mullen and was rude to him about the manner in which he suggested the meeting should proceed. I was left with a clear impression of the tail wagging the dog.
34. For reasons unrelated to the grievance, Mr Mullen was unable to continue. A new chairman of the grievance panel was appointed – Mr Smee.
35. On 13 July, the claimant sent an email with a diary of events [in the bundle at 204-215] which was before Mr Smee at the hearing on 31 July. In addition, he had before him the statements taken by Mr Mullen from all the other people present at the meeting on 3 June. A further meeting was necessary to conclude the grievance.
36. In trying to set up that meeting, the emails suggested that it would be the outcome meeting or if Mr Smee felt there was additional information he required, he would adjourn in order to get that information. The final letter setting up the meeting did not say it would be an outcome meeting. The claimant says she was unaware that was its purpose and she was unable to put her point of view.
37. The minutes of the meeting on 31 July 2015 show that the trade union representative, Ms Smith, considered this to be an outcome meeting. I therefore do not accept as accurate the claimant's view. Clearly, the person representing her was fully aware of what she expected to be the

result of the meeting, i.e. an outcome of the grievance. This suggests that the paper trail was clear.

38. The way in which the meeting proceeded is set out in notes prepared by Ms Bolton and Mr Smee which are accompanied by two signed statements from them. In effect, Ms Smith, the trade union representative, was unhappy with the way in which the grievance had proceeded to date saying there were several procedural defects and that she expected a settlement. If a settlement was not forthcoming then they were not prepared to wait for the outcome and would proceed to appeal. This effectively is what happened. Ms Smith threatened the respondent with seeing them in an employment tribunal. It was because of that threat of potential litigation that Ms Bolton and Mr Smee on the day wrote statements.
39. As those statements are the nearest thing to a contemporaneous note, I believe what was said in those statements that the meeting was not conducted in a conducive way to moving the grievance forward. The behaviour that was inappropriate was that of the trade union representative.
40. On 5 August, Mr Smee sent an outcome letter of the grievance. There were two aspects of the grievance: one relating to the way in which Jeanette Chambers continually sabotaged and attacked the claimant's credibility to the point that she describes as bullying and intimidation, and the second related to the events of the meeting of 3 June. The claimant's grievance was rejected.
41. The claimant appealed through her trade union representative. She subsequently supported that by a lengthy written submission.
42. The appeal hearing was conducted by Mr Murphy. It appears that although Mr Murphy had copies of the minutes of the earlier meeting, the claimant did not.
43. Owing to annual leave of both Mr Murphy and Ms Smith, the trade union representative, the outcome meeting could not be arranged until 23 September 2015. This was followed by a letter of 25 September running to three pages which summarised what had gone on. The outcome letter does not say in terms whether the claimant's appeal was successful or otherwise. It seeks to address the problems particularly in relation to the three main grounds.
44. The claimant relied on the procedural concerns identified, namely the way in which the grievance had been conducted. Mr Murphy found that the meeting on 31 July 2015 followed the respondent's grievance process but that the parties attended the meeting with very different views in mind. (Note that above I have found that the claimant's view did not tally with that of her representative.)

45. As regards witness statement evidence gathering, Mr Murphy accepted that when sending the claimant copies of documentation that was to be considered at the grievance hearing, it was an omission by Ms Bolton not to serve on the claimant the totality of the documents. Ms Bolton had not included those documents the claimant had submitted on the basis the claimant already had them.
46. However, Mr Murphy considered that during the appeal process all information had been fully shared well in advance of the meetings and this had rectified any defects that might have existed at the first stage.
47. Mr Murphy set out that the ultimate goal of a grievance is to resolve issues as swiftly as possible. He set out a proposed resolution noting that the working relationships had become very strained and he proposed a facilitation meeting,
48. On 22 October 2015, Mr Murphy proposed that the claimant should see occupational health. It took time for occupational health to make the appointment. There were a number of glitches that occurred, none of which fall at the feet of the respondent. Ultimately, the report from occupational health was not made available to the respondent until January 2016 for reasons again that are not the fault of the respondent.
49. On 23 October 2015 by email the claimant responded to the outcome letter (358-363). In the final page of the letter, the claimant said "I feel that the trust that should exist between employee and employer has been irretrievably damaged".
50. On 1 December, a facilitation meeting was held with Mr Murphy and it was proposed that the claimant should look at either a return to the iHub or to alternative jobs. She would be given ten days to look at the alternative jobs and to come back to the respondent. When the claimant finally received details of those jobs, she sought an extension of time for considering them. She then submitted a number of questions in relation to each job she was sent including questions about her former posting in iHub.
51. Mr Murphy took time to answer these questions and replied to each of them. The claimant then raised further questions. Mr Murphy sought to pin the claimant down to attending a meeting on 26 January to discuss her return to work. The OH report had said that if certain work issues could be resolved, the claimant was fully able to return to work. By this time, the claimant was without any form of sick pay, either contractual or statutory sick pay.
52. Mr Murphy answered the claimant's final questions on 22 January 2016. By email on 25 January, the claimant resigned. Her letter of resignation referred back to the intimidation she sustained on 3 June, the unfair monitoring by Mr Ward, failure to carry out an appropriate investigation for her grievance, failure at both stage 1 and stage 2 to give a specific detailed paragraph by paragraph responses to her grievance, failure to

take adequate steps to protect her health and safety at work, the fact that the respondent had restricted her communicating with her line manager, and the evasive manner in which Mr Murphy had replied to her questions. She finally referred to the length of time taken for the grievance.

53. On this basis, the claimant asserts that the respondent had breached the contract of employment by breaching the implied term of mutual trust and confidence and that she was entitled to resign and claim constructive dismissal.
54. I received from both parties written submissions. In essence, the respondent said the claim was misconceived and the claimant had not demonstrated that there was any form of breach of contract let alone a fundamental breach of contract. If there were such a breach of contract, then why did the claimant remain in the employ of the respondent after 23 October, i.e. when the claimant sent a response to the appeal outcome citing there was an irretrievable breakdown between employer and employee? By her actions the claimant had affirmed the contract.
55. The claimant's submissions focused on the factual conclusions relating to the 3 June meeting, the failure to deal appropriately with the email of 1 June, the failure to deal appropriately with the grievance and then referred to documentation that was obtained during subject access which cannot form part of the claim before me.

My conclusions

56. The claimant has not demonstrated there is any breach of contract by the respondent let alone one that indicates that their conduct had no reasonable or proper cause. As I have set out above, I do not find that the email of 1 June was a grievance and therefore there is no failure by the respondent in the way in which they dealt with that matter; it presented to me as a proper way of proceeding dealing with a single workplace issue.
57. The conduct of the meeting of 3 June was not as the claimant now seeks to describe it but was the way in which all the other participants of the meeting describe it. The claimant was difficult in the meeting and unfortunately being difficult in the meeting led to her being told a few home truths it appears. This is uncomfortable for an employee but it was meant to be a meeting for everyone to air their views and it was appropriate in the circumstances.
58. There was no behaviour which could be described as bullying by Ms Chambers of the claimant. It was not a failure by those facilitating the meeting to allow Ms Chambers to state her view. It would be wholly inappropriate to pick out one employee from any other as being wrong to air their views when the purpose of the meeting was to clear the air.
59. Did the respondent act in a way that without reasonable or proper cause in the way in which it conducted the first stage of the grievance procedure? It

was not a perfectly conducted procedure. Having a change of lead is not helpful. It might have been better to have explained in more detail to the claimant why there had to be a change of lead. Against that, I note that the claimant was very much trying to run the proceedings as she wanted them to go rather than as the respondent wanted them to go. At the end of the day it is the respondent's procedure and it is the person investigating the grievance who decides how to approach the matter.

60. It is apparent that the claimant had a great deal of opportunity to put forward her side of the case. There were attempts at the meeting on 8 July to engage with the claimant and allow her the opportunity to hear what other people had said so that she could comment but she talked over Mr Mullen. The claimant then submitted further written information. All of that was before Mr Smee. Armed with all that information, he was in a position to reach a view on the merits of the grievance.
61. The conduct of the trade union representative at the meeting of 31 July 2015 is extraordinary. It does not demonstrate the standards that, as an experienced employment judge, I would expect to see of a trade union official at a meeting which is to decide a grievance. It would have been more appropriate for the claimant and her representative to allow Mr Smee to give his outcome. Any notice of appeal could include the concerns about the procedure of the grievance to date.
62. Despite the claimant's assertion that she thought the meeting on 31 July was a further investigative meeting, it is apparent that the trade union representative was fully aware that it was an outcome meeting and therefore I find the claimant's stance now to be disingenuous.
63. The appeal process was conducted in a timely manner despite the claimant saying there was undue delay. The delays between the first meeting and the outcome arose because of annual leave.
64. Mr Murphy reached views he could do based on the information before him. He sought to resolve the grievance in the only appropriate way which is to ensure that an employee can return to work in an amicable and effective way for all concerned, including the respondent and the employee's colleagues.
65. Nothing that I have set out above indicates to me that the respondent has behaved in a way that is in any way designed to undermine the contract of employment or was behaviour that was other than reasonable and with proper cause.
66. The claimant sent a letter on 23 October in which she set out her response to the outcome and indicated that there had been an irretrievable breakdown between the claimant and the respondent. If the claimant considered that at that point, it was then that she should resign. She did not.

- 67. What happened thereafter was that the claimant participated fully with her employer, in relation to attending occupational health and with engaging with the respondent to explore different jobs. As an aside, I consider that the number and content of the questions to Mr Murphy to be excessive and unreasonable.
- 68. The respondent argues that the claimant resigned when she did because she was effectively being put on notice that she must commit to returning to work in some way. It was not because of the way in which the respondent had acted.
- 69. There is no evidence whatsoever that suggests that the behaviour of the respondent in trying to engage with the claimant to ensure she could return to work offering different jobs, meeting her enquiries, however unreasonable, and responding to them could be said to be conduct that was undermining the contract of employment. To the contrary, it was affirming it.
- 70. The claimant had also affirmed the contract. If she felt it had been breached at 23 October (irretrievable breakdown were her words), by her continuing to engage with the respondent without taking any action to resign or in any way challenge the validity of the occupational health assessment or the job roles, suggests that the claimant affirmed the contract. There was nothing that the respondent did prior to the claimant's resignation that could impact on her resignation.
- 71. I must conclude therefore that there is no breach of contract made out. The claimant cannot show that her resignation should be deemed a dismissal under s.95(1)(c) of the Employment Rights Act 1996.
- 72. In those circumstances, the claim of constructive unfair dismissal fails.

Employment Judge J Hill

Date: 13/03/2017

Judgment and Reasons

Sent to the parties on:

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For the Tribunal Office