



**THE EMPLOYMENT TRIBUNAL**

---

**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE TRUSCOTT QC

**BETWEEN:**

**Mrs J Argent**

**Claimant**

AND

**Rhema Church London**

**Respondent**

**ON: 31 August 2018**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Mr Richard Powell of Counsel**

**JUDGMENT**

The Claimant's claims of unfair dismissal and for notice pay and a redundancy payment are not well founded and are dismissed.

**REASONS**

**PRELIMINARY**

1. The claimant has bought a claim for constructive unfair dismissal. She relies on an alleged breach of an express term in her contract of employment or alternatively a breach of the implied duty of mutual trust and confidence by the respondent. She says she is entitled to a redundancy payment and notice pay.

2. The claimant gave evidence on her own behalf and represented herself. She led the evidence of Elizabeth Travis (Pastor Liz) and Jonathan Morris. The respondent was represented by Mr Richard Powell, barrister, who led the evidence

of Keith Mills, a solicitor engaged as a consultant by Trowers & Hamlins LLP of 10 Colmore Row, Birmingham, B3 2QD.

3. There was one volume of documents to which reference will be made where necessary.

## **ISSUES**

4. The issues relevant for the Tribunal were:

- i. Did the respondent commit a repudiatory breach (or breaches) of contract?
- ii. Was the claimant's resignation on 19 March 2018 in response to the alleged breach(es)?

5. The hearing was scheduled to address merits and remedy but due to shortage of time only the merits were addressed.

## **FINDINGS OF FACT**

6. In June 2002, the claimant became a volunteer assisting the Respondent for about two days a week. On 1 November 2008, the claimant was employed as an Administrator working four days a week from Tuesday to Friday.

7. The Respondent is an evangelical church which was founded by two former senior employees of the Respondent, Pastor Martin Phelps and Pastor Sandy Phelps (the Pastors), in 1991. The Respondent obtained charitable status in 1999.

8. The Charity Commission carried out a statutory enquiry into the Respondent in or around September 2015. At this time, the Respondent's bank accounts were frozen by the Charity Commission.

9. Mr Mills was appointed, along with Ms Helen Briant, as an Interim Manager on 30 November 2015 to address the Respondent's non-compliance with its charitable obligations; the inadequacy of the Respondent's policies and procedures, the fact that accounts had not been submitted for 2014/2015 and concerns regarding the use of charitable funds for personal use by the two founders of the Respondent. The Respondent was also the subject of two HMRC investigations relating to issues with credit cards and a lack of distinction between charitable and personal expenditure for tax purposes.

10. As part of his role as Interim Manager, he tried to work with the Pastors and other employees of the Respondent to ensure that the Respondent was run properly financially and in terms of its governance arrangements.

11. As part of this exercise, it was considered important to ensure that the terms and conditions that employees were working on for the Respondent were properly documented and correct. In light of this, Ms Briant, emailed the Claimant on 5 February 2016 advising her that she was reviewing the Respondent's affairs, including the terms that she was employed on [31B]. The Claimant was invited to attend a call to discuss this which was arranged for 11am on 12 February 2016. The Claimant sent a list of what she believed were her duties [31A and 31B].

12. The contract agreed on 1 April 2016 provided at clause 2.1 that she report to Pastor Martin Phelps. Clause 2.2 states "You may be required to undertake other duties from time to time as we may reasonably require." Her precise hours of work are set out at clause 5.1. In certain instances, she was required to report to Pastor Liz such as incapacity, clause 7.1, disciplinary and grievance, clause 9.1. Clause 19.1 provides: "The Employer reserves the right to make reasonable changes to any of your terms and conditions of employment in line with the needs of the charity." The contract has at Appendix 1 a job description for the Claimant [39] which was drafted in light of those discussions and the Claimant agreed to the terms of this contract on 14 April 2016. Most of these duties are wholly administrative in nature.

13. Following investigations into the issues identified by the Charity Commission and HMRC, and the resistance which Mr Mills encountered when asking employees to comply with policy and reasonable management instructions, Jonathan Morris, the then Financial Administrator for the Respondent, was dismissed for gross misconduct on 11 February 2017 and Martin Phelps was dismissed for gross misconduct on 28 November 2017. In response to Jonathan Morris' initial suspension, Sandy Phelps resigned with effect from May 2017. Elizabeth Travis, a Leader and Pastor for the Respondent was also dismissed for gross misconduct on 14 December 2017. The dismissals and resignations of senior staff put the Respondent into a state of uncertainty. This also caused changes in the work required of the Claimant. This is exemplified in an email by Pastor Liz to Mr Richard Black of the Charity Commission where she says, among other things: "Tom (said book keeper) is so out of his depth and unable to carry out the duties of our previous accountant, because he has no idea what those duties are and is so busy doing the work of the Interim Manager that he pays no attention or very little attention to Rhema's needs. Jacky tries her best to keep an eye on things and picks up his mistakes, omissions etc, but this is all added pressure and stress on her." [44]

14. In July 2017, an investigation was also launched into the Claimant's alleged misconduct [48 to 50]. On 11 September 2017, Mr Mills wrote to the Claimant explaining that he would like to obtain a written report so that he could understand the Claimant's medical condition [54 to 58] as she had been signed off work by a doctor. This letter contained a consent form [58] for the Claimant to sign together with guidance for the Claimant as to her rights regarding medical records.

15. On 5 October 2017, the Claimant was invited to an investigatory meeting to discuss the concerns which Mr Mills had regarding the Claimant's alleged misconduct [62 to 63]. The allegations were centred around the Claimant acting against the interests of the Respondent, in particular, by "leaking" confidential information concerning the Respondent, aiding and abetting an attempt to change locks at the Respondent's premises, removing and/or aiding and abetting the removal of files from the Respondent's premises and working with others to establish a separate church in breach of her employment contract. The Claimant did not attend the investigatory meeting scheduled for 12 October 2017 as she was signed off work due to stress.

16. On 19 October 2017, Mr Mills wrote to the Claimant explaining that he had instructed Everwell Occupational Health to undertake an assessment subject to the Claimant's consent [66 to 67]. This letter enclosed a further consent form for the Claimant to sign and return [68]. The Respondent's solicitors confirmed receipt

of the Claimant's signed forms on 10 November 2017 [70] and the Claimant confirmed on 15 November 2017 that an appointment had been made [70].

17. On 12 December 2017 the Claimant was invited to a further investigatory meeting [77 to 79]. This letter included an additional allegation that was not included in the letter of 5 October 2017 [62 to 63]. This allegation had subsequently come to Mr Mills' attention so it was not included in the letter sent to the Claimant in October 2017 [62 to 63]. Occupational Health had said that the Claimant was well enough to attend this meeting if certain adjustments were made [73 to 75]. Mr Mills had offered to make adjustments for the Claimant, such as rest breaks or to be accompanied by her husband [77 to 80 and 88].

18. Although Mr Mills had stressed that this was a fact-finding investigatory meeting and not a disciplinary meeting [77 to 79], the Claimant told him by email on 2 January 2018 that she would not attend a meeting in person and instead provided written information in relation to the allegations [82 to 87]. Mr Mills told her that he would deal with the investigation meeting in her absence [90]. The meeting went ahead without the Claimant on 9 January 2018.

19. On 30 January 2018, Mr Mills wrote to the Claimant to let her know the outcome of the investigation [95]. He concluded, on balance, that there was no disciplinary case to answer due to there being insufficient evidence.

20. In December 2017, a mistake was made in relation to the Claimant's salary. The Claimant was paid her normal salary rather than statutory sick pay. The Claimant repaid this money on 30 December 2017 [80C]. She repaid the full amount rather than retaining a sum for sick pay so a balancing payment was then made by the Respondent. The Respondent's accountant, Tom Wettren explained to the Claimant that he was working with the Respondent's payroll provider to generate correct payslips for the Claimant [93] and the Claimant was provided with an explanation of how her salary had been calculated together with payslips on 1 February 2018 [96 to 99].

21. Since the dismissal/resignation of the Pastors, the Respondent was not offering church services and as such was not generating any income. Accordingly, Mr Mills wrote to the three remaining employees of the Respondent, including the Claimant, inviting them to a meeting on 7 February 2018 to discuss proposed changes to the organisational structure of the Respondent [94].

22. On 2 February 2018 the Claimant emailed Mr Mills to let him know that she was not in a position to attend the meeting as she was still unwell [100]. She asked him to let her know in writing what organisational changes he was proposing to make.

23. Mr Mills replied urging the Claimant to attend the meeting [101] as he wanted to hear any thoughts that she might have on the proposed reorganisation - but she did not attend. He wrote to the Claimant on 12 February 2018 [102] to inform her that although he would need to make staffing changes namely, redundancies in relation to the PA to the Pastors and the Music Ministry role, her role was not directly affected as there was still a need for an Administrator at the Respondent.

24. On 16 February 2018, the Claimant replied asking for further clarification on what she would be administrating [103]. Mr Mills replied on 26 February 2018 and

welcomed her thoughts and suggestions [104] with a proposed job description [105].

25. The Claimant replied on 6 March 2018 [106 to 107]. She was concerned that the ethos of the Respondent had ceased to exist, that she would no longer be carrying out a service to God, and that she would no longer be working with the colleagues with whom she had a relationship. The Claimant also had some specific concerns with the proposed changes, such as her belief that the tasks should be carried out by a qualified accountant or required physical work. The Claimant suggested that her role had been made redundant.

26. Mr Mills replied on 7 March 2018 [108 to 109] and addressed the Claimant's concerns line-by-line, although he did not feel it was appropriate to comment on how the role affected her relationship with God or the ethos of the Respondent. It was his view that the requirements for the role were distinct from her feelings on these matters. He also confirmed that the Respondent has an accountant to carry out any tasks that should be carried out by an accountant and that she would not be required to do any physical lifting or carrying. He explained that the role was substantially the same and that she would be provided with training on anything where she felt this necessary. He invited the Claimant to meet to discuss and allay her concerns. He also advised the Claimant that the new job description would take effect on 19 March 2018 which was a date he understood that the Claimant would be fit for work.

27. The Claimant responded on 13 March 2018 [110 to 111]. She explained that the tasks/duties which she was now expected to undertake will be completely different or were once carried out by an accountant. "Also the nature, volume and complexity of the tasks are causing me further anguish." Mr Mills replied on 15 March 2018 noting her comments [116] and expressing sympathy for her position but explained that although she is no longer passionate about the role, there was still an Administrator role at the Respondent that needed to be undertaken. He offered to meet with her again and tried to support her return to work through occupational health.

28. The Claimant replied on 19 March 2018 at 06.46 [120] saying that when she took on the role of Administrator she did so because she wanted to "be an administrator for a live and active church especially assisting with the children's ministry". She went on to say that her concerns could not be alleviated with support from occupational health and that her "decision is firm to reject this new and different job role".

29. In light of this, Mr Mills emailed the Claimant on 19 March 2018 at 10.53 [121] asking her to confirm whether she was resigning or not as this was not clear from her email. He again explained that there was still a role at the Respondent for her to return to and that the changes to her role came into effect on that day.

30. The Claimant replied on 20 March [122] confirming that she was rejecting the new role. Mr Mills replied on 21 March 2018 [123 to 124]. Again, he advised the Claimant that there was still a role for her with the Respondent. He was conscious that she was feeling unwell and he wanted to give her an opportunity to speak with occupational health before resigning – this would have allowed him to make any reasonable adjustments to allow her to return to work.

31. The Claimant replied on 23 March 2018 [123]. She said that she did not understand why he was refusing to accept her decision that she was not willing to accept a new and different role with the Respondent. She confirmed that she considered that her employment had ended on 19 March 2018 and that she was "not prepared or willing to accept the new role/duties".

32. Mr Mills emailed the Claimant on 23 March 2018 [125], explaining that he was not refusing to accept her decision, he simply wanted to be clear. He confirmed that she had resigned with immediate effect from 19 March 2018.

33. The Claimant replied on 26 March 2018 [126] saying that she had not resigned but felt she had been made redundant due to the cessation of the live and active church offerings.

34. The evidence of the claimant was that she did not want to work in a Church which was not live and active. She said that she was not going to stay in a job that God had not called her to. It was not that she resigned because of the terms and conditions on offer as at 19 March 2018.

35. The Tribunal finds that the role of Administrator at the Respondent is not redundant. The Respondent has had a temporary agency worker undertaking the role instead of the Claimant and the administrative duties are now being undertaken by the only remaining employee who works additional days to cover the work required. There remained a need for administrative work to be carried out and this is reflected by the fact that the proposed new job description [105] was very similar to her previous job description [39]. The elements of the job description which were very specific to a working church had been amended, but broadly it was the same administrative role with very similar requirements – processing invoices, dealing with gift aid, dealing with petty cash, administrative tasks and office management. The list of duties that the Claimant prepared for the purposes of the hearing [132] is inconsistent in many respects with the job description agreed in April 2016 [39].

## **SUBMISSIONS**

36. The Tribunal heard oral submissions from both parties.

## **LAW**

### **Term of the contract**

### **Breach of an express term Implied agreement to vary contract**

37. The test of whether there has been a repudiatory breach of contract is an objective one, see **Leeds Dental Team Ltd v. Rose** 2014 ICR 94 EAT.

38. In **Kaur v. Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978 the Court of Appeal listed five questions to ask in order to determine whether an employee was constructively dismissed:

- 1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- 2) Has he or she affirmed the contract since that act?
- 3) If not, was that act (or omission) by itself a repudiatory breach of contract?
- 4) If not, was it nevertheless a part (applying the approach explained in *Waltham Forest v Omilaju* [2004] EWCA Civ 1493) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign.)
- 5) If so, did the employee resign in response (or partly in response) to that breach?

39. To establish constructive dismissal, an employee must be able to show that they resigned in response to the relevant breach. In **Nottinghamshire County Council v. Meikle** [2004] IRLR 703 (applied by the EAT in **Abbycars (West Horndon) Ltd v. Ford** UKEAT/0472/07) the Court of Appeal held that the resignation must be in response to the employer's repudiation. It need not be the sole reason, but it must have "played a part" in their leaving.

#### **DISCUSSION and DECISION**

40. The involvement of the Charity Commission in the work of the Respondent materially changed how the respondent functioned. The Church became non-functioning. This had a substantial effect on the Claimant as her Sunday volunteer work ceased. The section of the Claimant's document at 132 commencing with "Assisting Children's Church Pastor in the running of children's ministry... and thereafter relate to what the Claimant undertook for the Church on a Sunday and the consequences of that rather than her contractual duties.

41. Much of the time of the Tribunal was taken up with evidence about whether or not the Claimant was capable of carrying out the duties listed in the new job description [105]. The Tribunal was satisfied that the Claimant was a very capable administrator and what she was not able to do, she would have been assisted with. The Tribunal did not accept the evidence of the Claimant, Pastor Liz Travis and Mr Morris where it sought to suggest that the Claimant was not capable of carrying out the proposed duties herself. The Tribunal considered that Mr Mills was correct in thinking that the changes that they were proposing were minor and those that happen with the passage of time when job roles change slightly as a result of organisational changes.

42. There is an express contractual right to vary terms provided the variation is reasonable. What the Respondent proposed was reasonable. The changes that were made to her job description were minor, the old and new job descriptions were very similar. There was no breach of an express term.

43. The respondent did not commit a breach or breaches of the implied term of trust and confidence. The Tribunal finds that the respondent's actions were not calculated or likely to destroy or seriously undermine the trust and confidence between the parties. The evidence of Mr Mills was genuine and credible and he

wanted the Claimant to remain in employment. The Respondent did nothing which would entitle the Claimant to resign and bring a constructive unfair dismissal claim.

44. Most importantly of all, the reason the Claimant resigned was not because of the issue of terms and conditions of working with the Respondent but because they were no longer a functioning Church that God had called her to.

45. The claimant's claim of unfair dismissal is dismissed as is her claim for notice pay and a redundancy payment.

---

**Employment Judge Truscott QC**

**Date 13 September 2018**