



EMPLOYMENT TRIBUNALS

Claimant: Mrs W P Litchfield

Respondent: Santander UK Plc

Heard at: Leicester **On:** Thursday 17 May 2018

Before: Employment Judge Ayre (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr O Tahzib of Counsel

REASONS

1. By Claim form dated 27 December 2017, the Claimant brought claims for breach of contract and unfair dismissal against the respondent. The claims were resisted by the Respondent. In its Response the Respondent raised jurisdictional issues as the Claimant is, and remains, employed by the Respondent.

2. There had been some question previously as to whether the Claimant was also pursuing claims for holiday pay and for a redundancy payment. By e-mail sent to the Employment Tribunal on 10 May the Claimant stated that she was not pursuing either a claim for a redundancy payment or for holiday pay before the Tribunal. At the start of the Preliminary Hearing she confirmed that she was not pursuing those claims.

3. The sole issue for determination at the Preliminary Hearing therefore was whether the Tribunal has jurisdiction to hear the claims for unfair dismissal and breach of contract.

The Proceedings

4. There was an agreed bundle of documents running to 106 pages. The Claimant gave evidence and Michelle Pilsworth, Head of Complaints Operations, gave evidence for the Respondent.

5. On the morning of the Preliminary Hearing the Claimant produced a second witness statement. The Respondent did not object to the production of this statement and it was admitted into evidence.

Findings of Fact

6. The Claimant has been employed by the Respondent, and prior to that by the Alliance and Leicester, since 5 September 1988. She has continuity of employment going back to that date. The Claimant was initially employed as a cashier in the Alliance and Leicester branch network. In 1990 she became a Mortgage Adviser and in 1994 a Financial Adviser. Both roles were carried out within the branch network.

7. In 1996 and 1997 the Claimant took and passed 3 examinations as part of the certificate for financial advisers run by the Chartered Institute of Bankers. In March 1998 she took and passed a certificate in Mortgage Advice and Practice, also organised by the Chartered Institute of Bankers. In 2005 she took and passed an SV1 Savings and Investment qualification organised by the Chartered Insurance Institute.

8. In 2004 the Claimant left the branch network and became an Investment Advice Complaints Investigator. She was initially seconded to Group Customer Relations for a period of 6 months. The secondment was then extended and subsequently became permanent.

9. In 2006 the Claimant signed a 'notification of change to terms and conditions of employment' document which recorded her job title as 'Senior Adviser'.

10. The Alliance and Leicester was subsequently acquired by the Respondent and following the acquisition the Claimant's role was graded as Scale 2, Level 3 on the Respondent's pay and grading scale.

11. Until 2010/2011 the focus of the Claimant's work was dealing with complaints into investment advice and direct complaints to the Financial Ombudsman Service ("FOS").

12. In 2010 the work of the Investment and FOS complaints teams were consolidated into the Respondent's operations in Milton Keynes. The Claimant was, and still is, based at the Respondent's premises in Carlton Park in Leicester. The Claimant therefore did not follow the Investment and FOS complaints work to Milton Keynes.

13. In 2010 and 2011 there was a change in the nature of the work that the Claimant carried out. The Claimant was no longer required to work on investment complaints and handled a reduced number of FOS complaints. Instead she focussed on dealing with mortgage complaints. The Claimant was well placed to deal with mortgage complaints given her previous experience as a Mortgage Adviser.

14. The Claimant raised no objection at the time to the change in her work because there was no change to her grading or her role and her salary remained the same.

15. Most of the Respondent's mortgage complaints are currently dealt with in Teesside. The Claimant provided support to the Teesside team from Carlton Park.

16. Over time the Respondent's business needs changed and the focus of the area of the business in which the Claimant worked moved to banking and savings. The Claimant was asked to deal with complaints into general banking issues and savings and agreed to do so.

17. The Claimant remains employed by the Respondent, doing a combination of mortgage and banking/savings complaints work.

18. The Claimant accepted in evidence that since January 2017 her day to day work has not changed. The Claimant also accepted that she has no management responsibilities and has not had any since leaving the branch network in 2004. The Claimant said in evidence that her role today had completely changed from the one she had been taken on to do in 2006. The Tribunal finds that most, if not all, of the changes in the Claimant's role took place before 2017.

19. In 2015 the Respondent centralised its complaints handling operations. There were at the time no changes to role profiles and no job evaluations were carried out.

20. Following the centralisation process it became apparent to the Respondent that there were 16 different role profiles for complaints handlers within its business. The Respondent was concerned that it had employees doing very similar types of work but on different role profiles and on different salary levels.

21. As part of a project that it called Project Taurus the Respondent decided in 2017 to standardise its complaint handling roles. The Respondent reviewed all of the complaint handling roles and created 3 standard role profiles. These were evaluated or sized by the Respondent's HR department and given a grading and benchmark salary. All of the existing complaints handlers including the Claimant were aligned with one of the 3 new role profiles based upon the work that they were doing. The Claimant was aligned to one of the new role profiles at level S1/3 within the Respondent's pay and grading structure.

22. On 2 August 2017 the Claimant was told that following the job re-evaluation exercise her role had been graded at S1, level 3 and she was given a new role profile. This new role profile and grade came into effect on 1 September 2017. The Claimant was not issued with a new contract and there were no changes to her existing terms and conditions of employment.

23. The Claimant objected to the new profile and to the new grading. She continued to work for the Respondent but under protest.

24. The new role profile and grading were imposed by the Respondent on the Claimant unilaterally and without her agreement. There were however no changes to the nature of the work that the Claimant was carrying out pre and post September 2017. There were no changes to the Claimant's salary which has been protected at its existing level indefinitely. The Claimant's existing pension benefits in the Respondent's Defined Benefit scheme have not changed

and will not be affected by the regrading of her role. This is because in

2015 there were changes to the Respondent's Defined Benefit pension scheme and salary levels for pension purposes were frozen at their 2015 levels. From 2015 onwards salaries for pension purposes have increased at a set rate of 1% a year, irrespective of the actual increase received by the individual.

25. The Respondent also operates a Defined Contribution scheme with contributions calculated as a percentage of salary. There has not been any change to the contributions made into the Defined Contribution scheme on behalf of the Claimant because there has been no change to her salary.

26. The Claimant's existing benefits, namely medical insurance and holiday entitlement, have been preserved and have not changed.

27. The Claimant received a pay increase of 2.3% which was consolidated into her pay in 2017, together with a £60 none consolidated award. The pay award in 2017 was part of a 3 year pay deal.

28. There was no evidence before the Tribunal as to what future pay increases will be because that will depend upon what pay deal is negotiated between the Respondent and its recognised trade unions.

29. The Claimant told the Tribunal in her evidence that in 2017 there had been no changes to her role, with the exception of what she saw as her senior status which was in her view removed.

30. The pay range for the S2, level 3 grade has a minimum salary of £25,368, a maximum salary of £38,044 and the mid-point on the range is £31,073. The Claimant is currently paid a salary of £31,703 which is above the mid-point of the range. Under the Respondent's pay progression arrangements automatic pay progression at the pay scale only takes place if an employee's salary is below the mid-point in the range. The S1, level 3 pay grade ranges from a minimum of £18,409 to a maximum of £27,614 with a mid-range of £23,012.

31. As the Claimant's salary is above the mid-point in the range for the S2, level 3 grade she will not automatically receive pay progression increases and any pay increases will be dependent upon the pay deal negotiated between the Respondent and its trade unions.

32. The Claimant has received a pay increase in every year that she has been employed by the Respondent. Ms Pilsworth gave evidence that she was not aware of any year in which there had not been any pay increases.

33. There has never been any suggestion to the Claimant that her salary will be reduced as a result of the change in grading. There was no evidence before the Tribunal of any immediate financial impact on the Claimant as a result of the change in grading.

34. The Claimant gave evidence that she was concerned that the re-grading would have an impact upon her potential career progression. There was no evidence before the Tribunal however to suggest that the Claimant would be prevented from applying for new and more senior roles within the Respondent, and in any event when a job application is made by an internal candidate the job grade of that candidate is not included on the application form.

35. In September 2017 the Claimant had two meetings with her managers to discuss the change in grading and role profile. The Claimant asked to move to a different role because she perceived the new grading as a demotion. No alternative roles were available at Carlton Park where the Claimant wanted to work. The Claimant therefore remains employed at Carlton Park doing the same role that she was doing prior to September 2017 but on a different grade.

36. The Claimant subsequently raised a grievance which was investigated and not upheld save in relation to the fact that the grievance hearer accepted that there had been delays in dealing with the Claimant's grievance.

The Law

37. In order to bring a claim for unfair dismissal the Claimant must show that she has been dismissed within the meaning of Section 95 of the Employment Rights Act 1996. Such a dismissal can either be an actual dismissal where an employer gives notice or a constructive dismissal where an employee resigns in response to a fundamental breach of contract by the employer.

38. In order to bring a claim for breach of contract in the Employment Tribunal the claim must arise or be outstanding on the termination of the employee's employment as set out in Article 3 of the Employment Tribunals' Extension of Jurisdiction Order 1994.

39. I was referred by both parties to the case of **Hogg v Dover College** [1990] ICR 39. That was a case in which a full time teacher who was head of the College's history department was demoted unilaterally by the headmaster who wrote to him telling him that he was not able to continue as head of department, but could continue in a more junior role on reduced hours and at 50% of the salary that he had been earning previously. In that case it was held that the effect of the letter imposing the changes to the head of department's contract was to dismiss the individual by terminating his contract. The fundamental changes in the terms of employment were such that the Claimant was in effect dismissed.

40. I was also referred by the Respondent's representative to the case of **Alcan Extrusions v Yates** [1996] IRLR 327 in which the Employment Appeal Tribunal held that the employer's imposition of a continuous rolling shift system in place of a traditional shift system provided for in contracts of employment amounted to a unilateral termination of the employment of those employees. The EAT commented that where an employer unilaterally imposes radically different terms of employment, then applying the principle in **Hogg v Dover College** there is a dismissal if on an objective construction of the relevant letters or conduct on the part of the employer there is a removal or withdrawal of the old contract. Very substantial departures from an original contract of employment can amount to a termination of that contract and its replacement by the offer of a different and inferior contract, and the question of whether the departure from the original contract is so substantial as to amount to the withdrawal of the whole contract is a matter of fact and degree for the Employment Tribunal to decide.

41. I was also referred by the Claimant to the case of **Hazel and another v Manchester College** [2014] EWCA Civ 72. That is a case involving a TUPE transfer following which employees who refused to take pay cuts were dismissed

by their employer and re-engaged. The dismissal was held to be unfair and linked to a TUPE transfer that had taken place sometime previously. That case is on very different facts to the one before the Employment Tribunal today in that it involved actual dismissals and re-engagement. It has no application to this case in my view.

42. In submissions I was helpfully provided with a note on legal principles by the Respondent's representative who categorised the changes that have taken place as a relabelling rather than a downgrading and pointed out the fact that there had been no change in the work that the Claimant carried out and no impact on her salary and benefits.

43. In the Claimant's submissions there were substantial disparities between her contract pre and post September 2017 such that she had been dismissed.

Conclusions

44. I accept that there have been significant changes to the work that the Claimant has carried out. The majority of those changes however took place in 2011 and therefore cannot be relevant to the issues which I have to determine today, for a number of reasons. Firstly, because the Claimant accepted the changes to her role at the time and made no objection to them. Secondly, because even if the Claimant did not accept the changes in 2011, by not raising any complaint at the time and continuing to work, she has waived her right to do so now some 7 years later. Any complaints relating to the changes in 2011 would in my view be significantly out of time.

45. The focus of today's enquiry has to be therefore on what happened in September 2017. I have reviewed the position carefully and considered the reality of the situation for the Claimant both before and after September 2017. I recognise that grading and status is extremely important to many employees and to the Claimant in particular and I make no criticism of her for that. The Claimant is clearly a highly performing employee who takes her role extremely seriously and is proud of her long service with the Respondent, and rightly so.

46. Looking at what happened in September 2017 however, there was no change in the nature of work that the Claimant was carrying out. There was no change in her place of work. There was no change in her salary or in any of her benefits. There was no evidence of any change in working hours. All that changed was the grade and the potential that at some point in the future there could be more restricted pay increases.

47. On a day to day basis nothing changed for the Claimant in September 2017. There was no new contract introduced and she remained doing the same work as she had been doing previously.

48. It cannot be said that there were radically different terms and conditions, using the terminology of **Hogg and Dover College**, that were imposed on the Claimant. Nor can it be said that there were very substantial departures from the previous contract. The facts of this case are very different from those set out in **Hogg and Dover College** and in **Alcan**.

49. I am reminded of the comments of Judge C Smith QC in **Alcan** where he wrote that "in many cases to construe letters or other conduct on the part of an employer which puts forward no more than variations in a contract of employment

as amounting to a termination or withdrawal of such a contract would be quite inappropriate and wrong”.

50. The changes in this case were minor ones and it cannot be said that there has been a termination of the Claimant’s employment or a dismissal.

51. For those reasons I find that the Tribunal does not have jurisdiction to hear the complaints of unfair dismissal and breach of contract.

Employment Judge Ayre

Date 9 July 2018

JUDGMENT SENT TO THE PARTIES ON

16 July 2018

FOR THE TRIBUNAL OFFICE