



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs M Buckley

v

Broadland District Council

Heard at: Norwich

On: 4 January 2018

Before: Employment Judge Postle

Appearances

For the Claimant: Mr Buckley, Husband

For the Respondent: Mr Brett, Solicitor

JUDGMENT

1. The claimant was not constructively unfairly dismissed.

REASONS

1. The claimant brings a claim to the tribunal on grounds that she was constructively unfairly dismissed relying on the breach of the implied term of trust and confidence.
2. In this tribunal, we have heard evidence from the claimant who gave her evidence through a prepared witness statement. From the respondents, Mr Leggett the claimant's line manager. The tribunal also had the benefit of the bundle of documents consisting of 165 pages.
3. The claimant says that the last straw occurred on 20 April 2017 following a meeting at which management were informing the claimant and another work colleague about the difficulties another work colleague had as a result of a brain injury.
4. So far as the law is concerned section 95(1) sub-section c of the Employment Rights Act 1996 states that there is a dismissal where the employee terminates a contract with or without notice in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's

conduct. This form of dismissal is commonly referred to as constructive dismissal.

5. In order to claim constructive dismissal an employee must establish that there was a fundamental breach of contract on the part of the employer, that the employer's breach caused the employee to resign and that the employee did not delay too long before resigning and thus affirming the contract and losing the right to claim constructive dismissal.
6. The facts of this case show that at that time of the claimant's resignation she was performing two roles. Firstly, she was on secondment working approximately 22.2 hours per week as an Environmental Contracts Officer, she did not raise any issues about this role. Secondly her substantive post as an Environmental Services Advisor had been reduced to approximately 11 hours at the time she resigned. Originally, she had been working 20 hours per week in the substantive post and it is in this role which the claimant is referring to as part of the claim for constructive dismissal.
7. There was a reorganisation within the respondents Environmental Services Department that took effect from 1 January 2017. The claimant was given her first choice which was to remain in the contracts team, that being her substantive role. It is clear that the respondent has wherever possible helped with staffing issues that have arisen. There was extra work no doubt for the team for the period January to April 2016, due to the need to deal with brown bin renewal. It is clear that the respondents assisted by arranging some of its reception team on a temporary basis to cover with this additional workload. It is accepted they would require some training. The respondent also arranged for Linda Cushing and Jo Shirley Rook to perform extra duties for the period 25 May 2016 to 6 April 2017. The claimant and Ms Blackie were seconded into the Contracts Officer role, the claimant had shown an interest in this role, had applied for it on 7 March 2016 and was successful at that stage. The claimant's substantive role was reduced to 18.5 hours to accommodate this.
8. Around the end of June 2016 authorisation was obtained to recruit an additional member of staff to work as an Environmental Services Advisor. That person commenced their employment around 15 August 2016. The respondent also assisted by changing its closing procedure, that is when payments could be made from 4.45pm to 4.30pm to ensure that staff could get away promptly around 5.00pm. The respondent also had outsourced the managing and administration of its Pest Control to an existing external provider in October 2016. In October 2016 bulk, placed orders were also to be done by applicants online and in December 2016 there were further plans to assist with Brown Bin renewal.
9. In October 2016, the respondents agreed to the claimant's request for flexible working hours, this meant that in her Environmental Services Advisor role she had reduced her time to approximately 12.5 hours per week. On 21 March 2017, the respondent agreed to the claimant's request to reduce her hours in the Environmental Services role to 11 hours per week. It is also clear that on a number of occasions not only Mr Leggett, the claimant's line manager but Ms Bruton had made it clear that not only the claimant, but other work

colleagues could only do so much during the working day and they were not to worry about it. It is true that the claimant throughout her employment had no time off for stress, anxiety or indeed any other complaint.

10. On 20 April, there was a meeting arranged with the claimant, Caroline Blackie a colleague of the claimant with Mr Leggett and Ms Bruton. The purpose of that meeting was to discuss issues that had come about with a member of the administration team, a Tom Martin and how best the team could assist that colleague with his difficulties and should be aware of his problem. Tom Martin had agreed with Ms Bruton and Mr Leggett that his medical condition, his head injury that he had sustained previously was causing him anxiety and depression and that may go some way to explaining on occasions his odd behaviour. During this meeting the claimant became upset, stormed out of the meeting and slammed the door behind her. That day Mr Leggett having briefed Mr Block, his line manager about what had happened at the meeting. When they approached the claimant with a view to discussing matters, when Mr Block started a conversation with the claimant fairly quickly on it became clear the claimant was not only upset, but distressed and they considered it was not appropriate to continue and therefore withdrew.
11. On 21 April Sarah Bruton emailed the claimant "I'm so sorry that work is causing you such upset at present I know it has been an awful week I haven't mentioned yesterday as I can see you are focused on getting the work done today and I don't want to upset you further. I would like to put some time in the diary next week when you are back to catch up, is this OK with you?" signed Sarah. Before a meeting could take place on 24 April (141) the claimant resigned and her letter of resignation said, "I am writing to inform you that as of today, I formally wish to hand in my notice for both my jobs at Broadland District Council which are: I wish to take all my outstanding annual leave flex within my notice period." Regards Monique Buckley
12. On the same day (143) the claimant wrote to her colleagues setting out her decision to resign, but indicating that at the present time there were no other jobs that interest her within Broadland District Council.

Conclusions

13. The first question one has to ask, what was the fundamental breach which demonstrated that the trust and confidence had gone between the claimant and the respondents? In other words, had the respondents without reason or proper cause conducted themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust. I think not. The reason there was a restructure in January 2016, there is always teething problems after a restructure, the staff where possible were given additional resources, they might not have been trained at the outset, but training was given. None of the staff were required to perform over and above hours without pay and indeed they were offered overtime on a voluntary basis with pay. Nobody was forced to take it. I repeat assistance was offered from other departments, although I do accept they required some training.

14. The claimant had reduced her hours to take up her secondment and the meeting of 20 April it is difficult to understand the claimant's reaction about being told of the difficulties of another work colleague following a head injury. It is clear from the claimant's own letter/email to her colleagues that she did not believe that trust and confidence had gone with the respondents, because she talks in that letter about there being no other jobs that interest her at Broadland at that time. The implication being if there were she would have applied for them, which rather defeats the suggestion that the claimant had lost all trust and confidence in the respondents. The claimant's claim therefore for constructive dismissal must therefore fail.

Employment Judge Postle

Date: 12 / 03 / 2018

Sent to the parties on:

.....
For the Tribunal Office