



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs G Tipple

v

Biffa Waste Services Ltd

Heard at: Cambridge

On: 14 & 15 February 2018

Before: Employment Judge Cassel

Appearances

For the Claimant: In person.

For the Respondent: Mr J Chegwidden, Counsel.

JUDGMENT

1. The claim of constructive unfair dismissal fails and is dismissed.
2. The claim for breach of contract fails and is dismissed.
3. The claim for a redundancy payment fails and is dismissed.

REASONS

1. In her claim before the tribunal the claimant, Mrs Gayle Tipple, complains of constructive unfair dismissal, breach of contract and an entitlement to redundancy payment.
2. In the response submitted by the respondent the claims are resisted, dismissal is not accepted and it is averred that the claimant resigned.
3. The tribunal heard evidence over the two-days trial from: Stuart Glasson, who was formerly the senior operational support manager and is now depot manager; Sharon Fairbairn, who was formerly the regional general manager, and is now head of area development for the southern division and from the claimant Mrs Gayle Tipple. Produced for the hearing was a bundle of documents comprising 198 pages.

Findings of fact

4. The tribunal makes the following findings of fact based on the balance of probabilities having considered those documents to which attention was drawn.
 - 4.1 The respondent is a specialist waste company which deals with waste collections, waste treatment and the recycling of waste products.
 - 4.2 The claimant was employed by the respondent from 9 April 2001 until the 14 December 2016, initially as a senior traffic dispatcher and from 1 August 2015 as an operational support manager.
 - 4.3 There were two operational support managers in the South Midlands region to which the claimant was assigned. The claimant's role was junior of the two roles and reported on a day-to-day basis to Stuart Glasson who was then the senior operational support manager. Her responsibilities were provided for within a job description which was exhibited in the bundle of documents. The claimant stated in evidence that she never received it, and only became aware of the job description following the submission of her claim and the submission of documents. It is clear, however, from the evidence that her responsibilities included on a day-to-day operational support basis a support role covering a number of depots including Milton Keynes, Northampton, St Neots, St Albans, Peterborough and more latterly north London depot. The role was such that there was a degree of travel involved and a car was provided to her. The respondent's management were quite clear that if she needed overnight accommodation it was in effect automatically granted. There was a process by which she could obtain hotel accommodation which ran smoothly and she could simply decide if she wanted to stay at a particular location.
 - 4.4 In early 2016 the north London depot was identified as an under-performing depot. The evidence points to the claimant being extremely proficient in her role of traffic management, and for that reason the respondent's management were keen to have her expertise used at the north London depot. It was clear that she was required to work there on an increasing number of occasions.
 - 4.5 Round about September 2016 the claimant began to suffer from health concerns. The evidence suggests that she had a regrettably long-standing health issue with her heart, but it became apparent to the respondent in about September 2016 or was certainly highlighted when the claimant gave to Mr Glasson a copy of a letter from her consultant cardiologist dated 21 September.

- 4.6 Pausing there, the relationship that the claimant enjoyed with Stuart Glasson seems to the tribunal to be one based in workplace friendship. There was a degree of confidentiality and closeness, and the tribunal was impressed with the way that Mr Glasson throughout conducted himself given the bounds of the relationship. At various stages the claimant had concerns relating to what she perceived as her workplace treatment and the tribunal was satisfied that Mr Glasson used his best endeavours to clarify that there was no underlying plan or means by which the claimant was being undermined.
- 4.7 In any event following the receipt of the letter from the consultant cardiologist Mr Glasson referred the claimant to the company's occupational health department for advice and support, and a report dated 7 October 2016 was produced. It stated that the cardiac symptoms from which the claimant was suffering were under investigation, but at that stage nothing had been concluded.
- 4.8 Following the receipt of that report a welfare meeting was held on 17 October 2016. It was a normal workplace meeting and present were Stuart Glasson, Richard Lygo, who is the HR business partner and who attended as the notetaker. The claimant disputes the manner in which the meeting was conducted. However, there was nothing in evidence to suggest this was not an inappropriate way to deal with a welfare issue, and on the balance of probabilities there was nothing wrong in the manner in which that meeting was conducted.
- 4.9 The next event was a letter of 19 October 2016 which was prepared by the claimant's consultant. There were various recommendations and included within that letter was a comment stating "I have suggested that she has a discussion with her occupational health department about creating a sustainable work pattern with minimal travelling so that she has a good work life balance and minimal work related stress".
- 4.10 There was a follow up meeting on 21 October 2016 with the occupational health advisor. The tribunal accepts the claimant's evidence that that was a follow up meeting arranged following the first meeting. The report came up with suggestions that a health and safety risk assessment be undertaken in regards to the driving and the outcome of the assessment was that the case was closed.
- 4.11 There was a subsequent welfare meeting organised for the 31 October 2016, again Stuart Glasson chaired the meeting and Richard Lygo took notes.
- 4.12 The claimant has suggested that this meeting too was conducted in a manner which caused her to feel under threat. Again on the balance of probabilities there was no evidence before the tribunal to

suggest that the meeting was other than a welfare meeting conducted in a reasonable manner following an assessment that had been undertaken by the claimant's cardiologist. In any event, various arrangements were put in place and agreements were reached as to the manner in which action should be taken to minimise any risks to the claimant in driving, and in any other associated stress levels.

- 4.13 Mr Glasson had further contact with the claimant and performance issues that had been highlighted were then progressed. The tribunal heard from Mrs Fairbairn. She was an impressive witness, and oversaw the process and gave compelling evidence that the targets that were proposed for the claimant were reasonable, and the methods used again were reasonable.
- 4.14 In any event the claimant believed that she had been excluded from the business in certain regards and gave convincing evidence that she genuinely believed that to be the case. The tribunal had no difficulty in accepting that she genuinely believed that, but the evidence that was before the tribunal, and particularly that of Mrs Fairbairn was such that the decisions that were taken were for sound operational reasons essentially focussing on difficulties in the north London depot. In the tribunal's consideration of the evidence there was nothing to suggest that any of the means adopted were underhand or intended to cause the claimant stress or to cause her to leave her employment although the tribunal accepts the claimant genuinely believed that to be the case. In any event the claimant undertook efforts to find alternative employment and was successful in so doing. She stated that she started looking for alternative work on 2 November and effectively was offered a job very quickly afterwards which she accepted. The tribunal accepts her evidence that the reason that she sought another job was her genuine belief that she was being excluded from the business.
- 4.15 Following her resignation, the grievance procedure was initiated. The tribunal refers to this because any breach of contract must have crystallised as a matter of law prior to the date of resignation because by that date the acts of which she had complained had occurred. Having said that the grievance procedure was fairly carried out at both the first level and appeal level and sustainable conclusion were reached in this regard.

Submissions

5. Mr Chegwiddden had prepared a skeleton argument which dealt with all of the salient issues, as he submitted, relevant to a claim for constructive unfair dismissal. The hearing was put back to enable the claimant to consider those representations and make submissions of her own which she did.

Conclusions

6. The tribunal carefully considered the evidence and the provisions of s.95 (1) (c) of the Employment Rights Act 1996 where we are told:
“ An employee shall be taken to be dismissed by his employer if
the employee terminates the contract under which he is employed
(with or without notice) in circumstances in which he is entitled to
terminate it without notice by reason of the employer’s conduct.”
7. It is settled law that to succeed in such an application the claimant must show that the respondent was guilty of a fundamental breach of contract or showed an intention no longer to be bound by an essential term, that the breach and not something else caused the claimant to leave, and that she did not waive the right to terminate the contract by delaying too long after the breach. Breach of contract is the corner stone of the constructive dismissal claim. The burden of proof falls on the claimant.
8. Browne-Wilkinson J as he then was in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666, described how breach of the implied term of mutual trust and confidence which as is claimed are raised in this case might arise are stated:

“To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract. The tribunals function is to look at the employer’s conduct as a whole and determine whether it is such that its effect judged reasonably and sensibly is such that the employee cannot be expected to put up with it any longer.”
9. The tribunal has quoted extensively from this case because the tribunal is not persuaded that the respondent’s conduct judged sensibly and reasonably was such that the claimant could not be expected to tolerate it. The tribunal was not satisfied that there is a breach of contract, nor that the claimant left as a result of any alleged breach. Again, we repeat that was her genuine belief and she found another job for that reason but there is no evidence looked at sensibly and reasonably to substantiate that belief.
10. To succeed in a claim for breach of contract the claimant still needs to show that there was a breach and that as a consequence she suffered a loss. On the same findings of fact this claim also fails. There was no redundancy situation. The claimant was not dismissed on these facts and there is no entitlement to a redundancy payment. For these reasons the claims made by the claimant are dismissed.

Employment Judge Cassel

Date: 15 March 2018

Sent to the parties on:

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For the Tribunal Office