



EMPLOYMENT TRIBUNALS

Claimant: Mr M Peters

Respondent: Mansfield Town FC Limited

Heard at : Nottingham **On:** 22 October 2020

Before: Employment Judge Ayre (sitting alone)

Appearances

For the claimant: In person

For the respondent: Ms Sheriff, HR Representative

JUDGMENT

The claim for unfair dismissal fails and is dismissed.

REASONS

The Proceedings

1. By claim form presented on 16 January 2020 following a period of early conciliation from 8 November 2019 to 22 December 2019, the claimant brought a claim of unfair dismissal.
2. I heard evidence from the claimant and, on behalf of the respondent, from Mark Hawkins, Director of the respondent's Academy, who took the decision to dismiss the claimant, and Paul Broughton, Stadium Director, who heard the claimant's appeal. .
3. There was also a bundle of documents running to 311 pages which was referred to by both parties.

The issues

4. The issues that fell to be determined at the hearing on 22 October were :-
 - a. What was the reason for the claimant's dismissal? The respondent asserts that the claimant was dismissed for some other substantial

reason, namely third party pressure and the claimant's inability to meet his contractual obligations.

- b.** Was the dismissal fair or unfair?

Findings of fact

- 5.** The claimant was employed by the respondent from 21 June 2015 until 9/12 August 2019 as Head of Academy Coaching. His role involved organising and overseeing all coaching programmes in the 'Professional Development Phase', as well as overseeing and implementing the Academy coaching programme. Until his dismissal by the respondent the claimant had worked in professional football for all of his working life, initially as a player and subsequently as a coach and manager.
- 6.** The respondent is a professional football club which currently competes in League Two of the English football league. The claimant had previously played for the respondent, and returned to work at the club in June 2015 at the invitation of the then Head of Academy, John Dempster. During the time that the claimant was employed by the respondent there were no concerns about his performance.
- 7.** In 2015 the respondent set up an Academy to provide training to young players who it was hoped would subsequently go on to join the respondent's First Team. When it was established in 2015 the Academy was based at one site owned by Brooksby College and trained:-
 - a. Elite boys aged between 16 and 18; and
 - b. Approximately 40 16-18 year olds on a Brooksby College programme.
- 8.** All of the work was carried out on one site, with John Dempster and the claimant focusing on training the Elite boys.
- 9.** The Academy developed over time and by 2019 had changed significantly. There were, by 2019, more than 200 boys training at the Academy, ranging in age from 8 to 18, and the Academy was working with two colleges, Brooksby and Nottinghamshire. It now operates from several sites:
 - a. The original site at Brooksby College;
 - b. West Notts College;
 - c. The main Mansfield Town FC ground; and
 - d. A new training facility at Plesley where the First Team, Elite boys and 8-16 year olds train. This new facility is open to the public for community use and other teams also play there.
- 10.** Staffing levels at the Academy have also changed over time, and the number of employees has increased. In March 2020 the Academy moved from what is known as a 'Category 4' training facility to a 'Category 3' training facility.

- 11.** In 2016 the claimant was the subject of a private law court case that was brought against him. As a result of that case, the Football Association (“FA”) imposed a supervision order on the claimant, requiring him to be supervised by an ‘appropriate adult’ when he was in the presence of children under the age of 18. John Dempster and Mike Whitlow, the Under 21 Coach, agreed to act as appropriate adults. The effect of the order was that the claimant was not allowed to work with under 18s unless he was accompanied by one of the appropriate adults.
- 12.** It was John Dempster who fulfilled most of the supervision duties for the claimant. The claimant often gave Mr Dempster a lift to and from work, so they arrived at and left the College site where the Academy was based together.
- 13.** In April 2018 the FA withdrew the supervision order and imposed an interim suspension on the claimant, preventing him from taking part in any ‘football-related activity’, including managing, referring and coaching. The claimant was therefore unable to work for the respondent from April 2018 onwards.
- 14.** Whilst suspended by the FA, the claimant received six months’ full pay from the respondent, followed by six months’ half pay.
- 15.** In May 2019 the FA’s position changed, and the claimant was permitted to work in football under a new supervision agreement.
- 16.** On 15 May 2019 a new ‘Interim Supervision Agreement’ regulating the claimant’s involvement in youth football was signed. The terms of the agreement, in summary, were that the claimant was to be supervised at all times by an appropriate adult, and should have no unsupervised contact with any child under the age of 18 years, including in changing and toilet facilities. John Dempster and Michael Whitlow agreed to act as appropriate adults and provide supervision to the claimant. The agreement provided that any failure by the claimant or by the appropriate adults to comply with the terms of the agreement could result in FA disciplinary proceedings.
- 17.** After the Interim Supervision Agreement had been signed, the claimant was due to return to work. However, before he could do so, John Dempster was appointed as First Team Manager. He was no longer responsible for the Academy and could therefore no longer provide supervision to the claimant in his role as Head of Academy Coaching.
- 18.** Mr Dempster approached the claimant about becoming First Team Coach, and the claimant was keen to take up this role. The claimant gave evidence that he was offered and accepted the role. The respondent’s evidence was that the claimant was never appointed as First Team Coach. Mr Hawkins told the Tribunal that he was on the respondent’s Board of Directors at the time, and that the Board would have had to approve the appointment of a new First Team Coach, and did not do so. On balance, I find that there were discussions with the claimant about him becoming First Team Coach, but that no firm offer of the role was ever made to him.
- 19.** After Mr Dempster’s promotion, the respondent considered what alternative arrangements could be put in place to supervise the claimant. The delivery of

coaching and supervision to under 18s had changed over time. It was now delivered across three different sites, with participants traveling between the different sites as well as to matches. The number of under 18 participants had also increased significantly. The respondent would have had to ensure that there was an appropriate adult with the claimant at all times to supervise him.

- 20.** The principal of Brooksby College informed the respondent that the college would not allow the claimant to be present on its site without supervision due to the number of under 18s on the College's site. The College also specified that the claimant should be supervised when entering and leaving the site.
- 21.** The respondent concluded that it would not have been possible for John Dempster, as First Team Manager, to continue to fulfill the role of Appropriate Adult. Mr Dempster's new role involved traveling to meet agents and players.
- 22.** On 19 July 2019 a meeting took place with the claimant and a representative from the Professional Footballers' Association ("PFA"). During that meeting there was a discussion about the supervision arrangements and the respondent's ability to continue to provide them. Chris Ball told the claimant that he had contacted the FA who had told him that if the club could not guarantee to provide two nominated persons to supervise the claimant, then he could not work.
- 23.** Mr Ball outlined the practical difficulties of providing supervision as the Academy was now split across different sites 40 miles apart, and the club could no longer provide assurances to the FA and Brooksby College that the claimant would be supervised. The claimant was told that the respondent could not identify other members of Academy staff to provide alternative supervision given their age and lack of experience. Richard Cooper, Academy Manager, explained the practical issues in terms of driving minibuses to matches, that he had tried to ring fence the claimant's coaching responsibilities to higher education under 21 students, but that this was unworkable.
- 24.** The meeting concluded with the claimant being told that the overall conclusion was that it was impractical for the claimant to continue to work for the respondent, and as such options for terminating his contract needed to be discussed.
- 25.** On 31 July 2019 Richard Cooper wrote to the claimant inviting him to a meeting on 2nd August to discuss the claimant's continued ability to carry out his role, and the safeguarding implications raised by Brooksby College. The claimant was informed that one potential outcome from the meeting was the termination of his employment with the respondent. The claimant was also informed of his right to be accompanied at the meeting.
- 26.** The meeting was subsequently postponed, due to the unavailability of the claimant's chosen PFA representative, and rearranged for 9th August.
- 27.** The meeting on 9th August was attended by Mr Hawkins and Mr Cooper, with Ms Sherriff from HR taking notes. The claimant was accompanied by a solicitor appointed by the PFA, Mark Knowles.

28. Mr Hawkins explained the respondent's concerns that it would no longer be able to meet the terms of the Interim Supervision Agreement due to the change in Mr Dempster's role and in the way in which the Academy operated. He said that the claimant would not be able to drive the minibus because he would have to put another coach in the minibus with him, and that the College had a real concern that the claimant would not be supervised at all times/ He also said that the FA and the College had both told the club that the claimant could not work unless the club could supervise the claimant at all times.
29. The claimant's representative suggested that the claimant could continue to work with the First Team, supervised by John Dempster and Mike Whitlow or Lee Glover, the Assistant Manager. At least one member of the respondent's First Team is under the age of 18.
30. The respondent's position was that neither John Dempster nor Lee Glover could be with the claimant at all times. On match days, when there are a lot of under 18s in the ground, the First Team Manager and Assistant Manager could be extremely busy, be involved in press interviews.
31. The claimant asked whether the club physiotherapist could supervise, but the physio had just resigned and would not always be travelling to away matches.
32. The respondent considered amending the Interim Supervision Agreement but could not find anyone suitable to act as appropriate adults. Mr Hawkins approached Richard Cooper, the Academy Manager, and asked him if he would be willing to act as appropriate adult. He did not want to do so.
33. Mr Hawkins also asked Simon Ward, now Head of Coaching. He also told Mr Hawkins that he did not want to do the role.
34. The club's position was that it could not afford to employ a coach to specifically follow the claimant around. Whereas previously, when the Academy had been based on one site and all Academy coaching staff worked at the same site, it had been possible to provide supervision. Now that the Academy was split over a number of sites, with travel between the different sites required as part of the job, it became much more difficult to supervise the claimant. The respondent did not have the resources to dedicate another coach to supervise the claimant.
35. At the end of the meeting on 9 August, after an adjournment, Mr Hawkins told the claimant that his employment was being terminated. Mr Hawkins confirmed his decision in writing, by letter dated 19 August 2019. In that letter the reasons given for terminating the claimant's employment were:-

"We agreed that realistically it is not possible for you to continue in your role of Head of Academy Coaching without the ability to work across multiple sites and without the strain that would be placed on academy coaches who would be responsible for your supervision. We discussed the possibility of alternative employment, however unfortunately there is no alternative employment available because of similar constraints and the presence of Under 18 year olds across all premises and involved in all teams.

I have also given consideration to the possibility of retaining you in the company but unfortunately it would be impractical to do so as there is no anticipation that you will be able to return to work in your normal capacity for the foreseeable future. As coaching and working with Under 18 year olds is a central part of your role, you are now in the position where you are unable to perform your contractual duties because it wouldn't be possible for you to continue your normal duties whilst the supervision order remains in place."

36. Mr Broughton did not discuss his decision with the Chairman of the club.
37. The claimant was informed of his right to appeal against the decision to dismiss him and did so. Paul Broughton, the respondent's Stadium Director, was appointed to hear the appeal, and an appeal hearing was arranged for 23 September 2019. The claimant was accompanied at the appeal hearing by Mark Knowles. Mr Knowles and the claimant set out in detail the claimant's grounds of appeal and the appeal hearing was then adjourned.
38. Following the hearing, Mr Broughton reviewed the case and reached his decision, which he sent to the claimant by letter dated 30 September 2019. Mr Broughton decided to uphold Mr Hawkins' decision to dismiss the claimant. In summary, Mr Broughton's reasons were:-
- a. It was not possible for the claimant to remain as Head of Academy Coaching as a result of the supervision order from the FA and the need for the claimant to work across multiple sites, because of the logistical and additional pressures placed on coaches who would be responsible for supervising the claimant;
 - b. The club had considered alternative positions but concluded that these would face similar constraints due to the presence of under 18s. Consideration was given to alternative employment without involvement with under 18s but none of the vacancies were suitable for the claimant.
39. Mr Broughton concluded that the claimant had not already become part of the First Team, as he alleged, and that the terms of the Interim Supervision Agreement required him to be supervised at all times when under 18s were present.
40. I accept the respondent's evidence that it did consider alternative roles for the claimant, but that all of the appropriate roles would have included contact with under 18s. I also accept the respondent's evidence that it would not have been possible for John Dempster or Lee Glover to supervise the claimant given the nature of their roles with the First Team.

The Law

41. Section 98 of the Employment Rights Act 1996 ("**the ERA**") provides that :-

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

- (a) The reason (or, if more than one, the principal reason) for the dismissal; and
- (b) That it is either as reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position with the employee held...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

- (a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
- (b) Shall be determined in accordance with equity and the substantial merits of the case.

- 42.** In order to rely upon some other substantial reason (“**SOSR**”) the employer must show that the reason relied upon must be substantial, not frivolous or trivial, and must justify the dismissal of an employee holding the job in question. A reason need not be sophisticated, it must however be genuine.
- 43.** If the employer establishes that there is a substantial reason which could potentially justify dismissal of the employee, the Tribunal will then go on to consider questions of fairness.
- 44.** It is well established that where a third party with influence over an employer places pressure on the employer, then dismissal can fall within SOSR. In order to ensure that the dismissal is fair, however, the employer must do everything it reasonably can to avoid or mitigate any injustice to the employee. (*Henderson v Connect South Tyneside Ltd 2010 IRLR 466, EAT*).
- 45.** In *Dobie v Burns International Security Services (UK) Ltd 1984 ICR 812*, the Court of Appeal held that, when considering the reasonableness of a dismissal due to third party pressure, tribunals should look at the conduct of the employer and, importantly, whether dismissal is an injustice to the employee.

Submissions

Respondent

- 46.** Ms Sherriff submitted on behalf of the respondent that there is a restriction on the claimant's ability to work freely in football governed by the FA. The core business activity of the Academy is football training for under 18s. There is therefore a heavy duty on safeguarding. In addition the respondent's presence on College premises means that the respondent has to comply with the College's safeguarding policies also.

- 47.** Initially the respondent was able to support the requirements of the claimant's supervision order imposed in 2017 because of the size and nature of the Academy at the time. The main supervisor was John Dempster who travelled to and from work with the claimant, which enabled 'natural' supervision.
- 48.** The respondent had, in Ms Sherriff's submission, supported the claimant through his period of suspension.
- 49.** They had also considered alternative roles for the claimant. None were practical, and they would result in the burden of additional costs. What would happen if one of the supervisors was off with sickness or injury? The position of First Team Coach had been discussed with the claimant, but not confirmed as all appointments were subject to approval by the Board.
- 50.** Failure to comply with the terms of the Interim Supervision Agreement could result in disciplinary action being taken. The respondent also had to consider the potential risks to its reputation.
- 51.** The claimant's dismissal was, therefore, for some other substantial reason, namely the pressure from the FA that the claimant work under the terms of the Interim Supervision Agreement, and the pressure from College, a significant customer of the respondent.

Claimant

- 52.** The claimant submitted that the respondent's position was based on the claimant still working at the College site, when in fact his role was with the First Team.
- 53.** No alternative positions were ever put to him formally. There had been no problems previously with his supervision or with his performance.
- 54.** Richard Cooper would, he argued, have supervised him as he had done so before.
- 55.** The appeal with Mr Broughton lasted just 18 minutes, and resulted in the end of the claimant's 30 year career in football. There was no attempt by Mr Broughton to resolve the issues.
- 56.** The decision to dismiss the claimant was, in his view, made by the Chairman of the club, and was not fair.

Conclusions

- 57.** In light of the evidence that I have heard, I have concluded that the reason for which the claimant was dismissed was that it was no longer possible for him to perform the role of Head of Academy Coaching due to the requirement that he be constantly supervised in the presence of under 18s.
- 58.** This was as a result of changes in the nature of the Academy, in particular the fact that it now operated across different sites, and to changes in staffing,

particularly the fact that John Dempster, who had previously fulfilled the main supervisory role, was no longer able to do so.

- 59.** The respondent was also under some pressure from the FA and Brooksby College to ensure full compliance with the terms of the Interim Supervision Agreement by ensuring that the claimant was supervised by an appropriate adult at all times on College premises.
- 60.** I accept that the reasons put forward by the respondent for dismissing the claimant were genuine, and were substantial. The primary purpose of the claimant's role as Head of Academy Coaching was to coach under-18s. Even the new role of First Team Coach, which Mr Dempster discussed with the claimant, would have involved contact with under 18s, especially on match days. The Interim Supervision Agreement was put in as a safeguarding measure to protect children, and it was reasonable in my view for the respondent to want to comply both with that agreement and with the stipulation of Brooksby College that the claimant be supervised at all time on its site.
- 61.** In the circumstances, I accept that the reason the respondent put forward for dismissing the claimant was a substantial reason which was capable of justifying the dismissal of an employee holding the role that the claimant held.
- 62.** I have therefore gone on to consider whether the dismissal was fair, in accordance with the requirements of section 98(4) ERA.
- 63.** The procedure followed by the respondent in dismissing the claimant was, I believe, a reasonable one. The claimant was informed of the situation in a meeting on 19 July and knew, from then on, that his employment was at risk.
- 64.** There was then a further meeting on 9 August 2019, and in advance of that meeting he was informed of the purpose of the meeting and that the potential outcome could be his dismissal. He was represented at that meeting by a solicitor appointed by his trade union and had every opportunity to put forward his side of the case.
- 65.** He was provided with reasons for his dismissal in writing, and had the opportunity to appeal. The appeal was heard by a different manager, and the claimant was again represented by a PFA solicitor at the appeal hearing.
- 66.** I conclude, therefore, that the respondent followed a fair procedure when dismissing the claimant.
- 67.** I find that the respondent did take steps to try and avoid the dismissal by finding the claimant an alternative role. They considered the possibility of John Dempster and Lee Glover performing the role of appropriate adult, but concluded that this was not practical due to the nature of their roles and the pressures on them, particularly on match days.
- 68.** I accept Mr Hawkins' evidence that he also asked Richard Cooper, the new Academy Manager, and Simon Ward, Head of Coaching, if either of them would be willing to supervise the claimant, and that both said no.

- 69.** The respondent also considered whether the physiotherapist or another coach could provide supervision and concluded that this was not practical or affordable.
- 70.** The respondent had, since 2017 when the initial supervision order was put in place, taken considerable steps to support the claimant and to enable him to remain in employment. They appointed appropriate adults to supervise him in 2017, and when he was suspended by the FA from any football related work in 2018 continued to pay him full pay for 6 months, followed by 6 months' half pay.
- 71.** In 2019, when the FA changed its position, the respondent entered into a new Interim Supervision Agreement with the claimant, to enable him to be supervised by the two 'appropriate adults' identified previously.
- 72.** It is regrettable that the situation changed so quickly after this agreement was signed. It would have been particularly difficult for the claimant, who was hoping to take up a new role as First Team Coach, but then faced dismissal. It is also regrettable that the respondent did not try out one of the options suggested by the claimant and his representative during the dismissal and appeal hearings.
- 73.** The decision to dismiss was, in my view, a harsh one, and may very well not have been the decision that other employers would have taken. I have reminded myself, however, that I must not substitute my view for that taken by the employer and, on balance, I accept that dismissal was within the range of reasonable responses available to this respondent.
- 74.** I have therefore concluded that the claimant was fairly dismissed for some other substantial reason.

Employment Judge Ayre

20 January 2021

Sent to the parties on:

22 January 2021

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For the Tribunal:

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