



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Moran

**Respondent:** Mr Gary Ata trading as Noble Design & Build

## AT A HEARING

**Heard at:** Leeds by CVP video conferencing    **On:** 30<sup>th</sup> & 31<sup>st</sup> July 2024  
**Before:** Employment Judge Lancaster

### Representation

**Claimant:** In person

**Respondent:** Mr R Katz, consultant Peninsula Business Services

## JUDGMENT

1. The claim of failure to pay accrued holiday pay at the date of termination is dismissed on withdrawal.
2. The claim of constructive unfair dismissal is dismissed.

## WRITTEN REASONS

1. At the conclusion of the cross-examination of the Claimant at 10.27 on the morning of Day 2, the case was adjourned until 11.00 to allow her time then to prepare for her own questioning of the Respondents' witnesses.
2. At 10.34 the Claimant emailed the Tribunal to say that:  
"I won't be attending the final part of the hearing. The stress of this is causing me to feel unwell."
3. Because the Claimant did not apply for an adjournment or give any indication that she would ever be in a position to resume the hearing it was decided that it should proceed in her absence under rule 47 of the Employment Tribunal Rules of Procedure 2013.
4. Gunes (Gary) Ata and Ceyda (Jade) Ata were both therefore sworn and confirmed the accuracy of their respective witness statements, and Mr Katz made closing submissions on behalf of the Respondent.
5. Because the Claimant would not have been present to hear any oral decision the judgment was then reserved to be given in writing, with reasons, under rule 62 (2).

6. The Respondent's business is in two parts, firstly the letting and maintenance of student accommodation, and secondly building new build developments. Mr Ata and his daughter manage the business, but are not based in Sheffield. The Claimant was employed by the Respondent, as a maintenance and compliance manager from 19<sup>th</sup> April 2021 until her resignation on 29<sup>th</sup> September 2023, and within the structural organisation of the business, Ms Ata was her line manager.
7. B, who is an employee and/or a director of a separate company which invoiced the Respondent for its services, was nonetheless fully integrated into the business with the title of "Project Manager, Noble Design and Build" and worked under the direction of the Respondent. Although, as his job description indicates, B was primarily engaged in the second part of the business the evidence shows that there was considerable overlap in responsibilities between the two sides and that he was also actively involved in matters related to letting and maintenance. I am satisfied therefore that in his workplace interactions with the Claimant he was acting as a duly authorised agent of the Respondent.
8. The claim is now solely one of constructive unfair dismissal under section 95 (1) (c) of the employment Rights Act 1996. The leading authority on this subject is of course, as Mr Katz submits, Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, in which the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract.
9. In order to claim constructive dismissal, the employee must therefore establish that:
  - o there was a *fundamental breach* of contract on the part of the employer that repudiated the contract of employment
  - o the employer's breach *caused* the employee to resign, and
  - o the employee did not *delay* too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
10. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though that incident by itself does not amount to a breach of contract. In Omilaju v Waltham Forest London Borough Council 2005 ICR 481, CA, Lord Justice Dyson considered that the last straw does not have to be of the same character as the earlier acts in the series, but it must contribute something to the breach of trust and confidence, that is that a Respondent employer must not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or to seriously undermine the relationship of mutual trust and confidence that ought to exist between employer and employee.
11. It was established at the preliminary hearing, that the relevant time frame for this claim is between 25<sup>th</sup> July 2023 (the date of the first and subsequently retracted resignation) and 22<sup>nd</sup> September 2023 (the date of the second resignation which took effect on 29<sup>th</sup> September 2023). The further information which the Claimant was then ordered to provide related to this period.
12. Prior to 25<sup>th</sup> July 2023 it does appear that working relationships within the Respondent's Sheffield offices were largely amicable and that there was a culture of social interaction and friendships outside of work. However I find by way of background that there was a tendency towards gossip, sexual innuendo and over-familiarity.

13. Whilst some of the actions of B before July 2023 were clearly on her evidence unacceptable and made the Claimant feel uncomfortable she acknowledges that she did not actually consider herself physically or sexually threatened by him, and her confronting him had led to changes in his behaviour.
14. On Saturday 22<sup>nd</sup> July 2023 the Claimant went on a night out with work colleagues and their partners. There were issues as to whether members of the group were perceived by others to be showing inappropriate signs of affection to each other, including it appears B's wife and a female employee and the Claimant and a male colleague M. However, contrary to what I had understood from the preliminary hearing. it is not B's conduct on 22<sup>nd</sup> July – an event outside of work - which is in fact any issue in this case.
15. On Monday 24<sup>th</sup> July 2023, the Claimant was absent from work and messaged Ms Ata to say she was “not feeling good”, but it is not suggested that that ill health relates to something which had happened on the Saturday.
16. However, when the Claimant returned to work on Tuesday 25<sup>th</sup> July 2023 she describes in a further message to Ms Ata how she and B nearly got into a fight because he was “Accusing me of sleeping with M, He's inappropriate.” The Claimant has admitted that she too did not behave as well as she should have on this occasion. It is at this point that the Claimant first resigns, walking out and leaving her keys in the office.
17. The Claimant followed this up with a lengthy message to Ms Ata, which she accepts reads somewhat incoherently, where she seeks to expand upon her reasons for leaving. The Claimant's witness statement says of this communication that “I didn't state what B did, but why B was acting in that way towards me”. That is that it was not primarily about anything B had done, but about possible motivation, what the Claimant understood him to be thinking and why she considered his opinions about her to be wrong. Doing the best I can, and also taking the further written and oral evidence of the Claimant into account, I conclude that she considered from this point that the essentially personal issues which she had with B and which he had with her had now been brought into the workplace, so that there was a breakdown of the working relationship. This was, however, I find, a breakdown in their personal relationship, arising out matters unrelated to work even though it had a potential impact upon their ability to continue to work together
18. The Claimant was asked by Mr Ata to conduct a “handover” until the end of August, but was not told that she had to work a notice period or that she was being forced to do anything she was uncomfortable with. Both Mr and Ms Ata separately reassured the Claimant that it would be possible to keep her and B separate, and another employee, J, also told her that this was what they were indeed attempting to do. At the end of Sunday 30<sup>th</sup> July 2024, having spoken again to J who was also implicated in the making of accusations about her and M and having been assured that the situation would not continue, the Claimant confirmed to both Mr and Ms Ata that she would be returning to work tomorrow (Monday 31<sup>st</sup> July). In context this was evidently then understood as a retraction of the resignation, and not simply her agreement to conduct the proposed handover.
19. From that point the Claimant did not have any dealings in person with B, save occasionally passing each other. Their exchanges were purely by message on the

work group chats or by email, and from a very early stage (2<sup>nd</sup> August) the Claimant was clearly willing herself to initiate such contacts with B on work-related matters. On one specific occasion (10<sup>th</sup> August) when the Claimant went to the other office where B was based although she said “I know I’m not supposed to”, Ms Ata made arrangements to ensure that B would not in fact be present at that time. Similarly, also on 10<sup>th</sup> August, when a disagreement arose by email between the Claimant and B involving their responsibilities for carrying out fire safety checks, Mr Ata expressly intervened to tell the Claimant not to respond to what he described as B’s “nonsense email” and that he would sort it out.

20. On 14<sup>th</sup> August 2023 the Claimant messaged Ms Ata to say:  
“Jade, I’ve been keeping quiet but this thing Ben has with me, I can’t take it.  
He’s bringing his personal issue with me into work and I’ve tried so hard to bite my tongue but if he continues to do it, I can’t work here anymore. I’m also saving the evidence because it’s actually uncalled for.”  
She did not elaborate when asked what she meant, but did say further that:  
“I’m keeping a record because it’s very difficult to explain what he’s doing.”
21. No such contemporaneous evidence or record has been produced by the Claimant. Within the further particulars of her claim and the extended version of that document which has served as her witness statement, the Claimant provided a number of screen shots of work-related messages from B. However even where these show differences of opinion between them about what should or should not happen, I cannot objectively read these as evidence of the Claimant being undermined as she alleges.
22. This was clearly a stressful and challenging work environment, and I accept the Claimant’s evidence that the business was short-staffed and that additional responsibilities therefore fell upon her, as well as accepting that she had over all her time with the Respondent worked very hard and was good at her job. There is, however, no evidence that I can see to support the allegation that her work load was “doubled” by B after her raising of her issues with him after 25<sup>th</sup> July 2023. There is one exchange with Ms Ata where the Claimant argues cogently that it is unreasonable to expect her to produce spreadsheets by the proposed deadline, given her existing workload, but this is no more than an incident of the pressures upon the business, and there is no suggestion that the Claimant was then subjected to any repercussions because she did not do it immediately.
23. What appears to have then happened is that the Claimant was told that B and J had been overheard repeating the allegations about her and M, and making further salacious comments that this involved a third person also. This is not a matter which is reference anywhere in the papers before the Tribunal and has emerged only in cross-examination. It is, of course, double hearsay evidence coming now from the Claimant.
24. The Claimant did not raise any formal or informal grievance, but instead herself, against the instructions of the Respondent. convened a whole staff meeting on 13<sup>th</sup> September 2023 where she might make all her accusations directly against fellow workers. She did not inform Mr or Ms Ata of the matters she intended to raise, most if not all of which seem in fact to have been historic from before 25<sup>th</sup> July 2023. Not surprisingly that meeting was in the event somewhat heated. The Claimant addressed her concerns firstly towards J, and then towards B, and B in particular responded

angrily to accusations made against him. This was, of course the first direct contact between the Claimant and B since 25<sup>th</sup> July and it was at her instigation. However on the Claimant's own statement in her further particulars the meeting ended with a reassertion that communications between her and B would continue only through email.

25. What finally led to the Claimant's second resignation on 22<sup>nd</sup> September 2023 was an exchange with Ms Ata regarding an overdue rent payment from her to the business (which I understand is not disputed) and more particularly about holidays. The Claimant had attempted to book two days off for 20<sup>th</sup> and 21<sup>st</sup> September. This request was then shown as deleted on the system, and the Claimant did then email Ms Ata on 7<sup>th</sup> September to inform her of the problem. That email was not acknowledged. When the Claimant then took her holiday as planned on 20<sup>th</sup> September 2023 Ms Ata then messaged her to say that her original leave request was shown as having been subsequently deleted from the calendar by her so that her absence was unauthorised. The Claimant did not reply to that message: she still took the two days off but then contacted Ms Ata on 22<sup>nd</sup> September 2023 to say:  
"Should I just stay home?" and with regard to the rent arrears "Take it from my final wage."  
The reason she was not initially intending to come in to work after her holiday was because J had apparently told her that Ms Ata did not want her back. She followed up immediately with a further email:  
"I'm seeing out this month and then I'm done. I'm not doing this anymore. I've already spoken to someone about this. Ever since I put my complaint in you, and Gary have been unreasonable with what you require from me.  
I stayed because your pregnancy and to help you. But I can't do it anymore. I don't want to do it anymore. I'll see out this month, and if everything is okay with my wage, commission and the holiday's I haven't taken this year. We should be okay."
26. On balance, I am satisfied that the issue regarding the holiday booking was the result of careless miscommunication, and not a deliberate act on the part of Ms Ata. It was not in itself a breach of contract, let alone a fundamental one. Given that I accept from the Claimant that there was a history of mis-recording holiday requests, and because Ms Ata clearly had disregarded the Claimant's unanswered email of 7<sup>th</sup> September when she said that the holiday was not approved, this is not however a merely innocuous act. In appropriate circumstances it would be capable therefore of constituting the "last straw".
27. Two days before the expiry of notice, on 27<sup>th</sup> September 2023 the same date that she contacted ACAS having "sourced legal advice", the Claimant sent an email, stating:  
"There are a multitude of reasons but the main reason is since I put in the complaint, it's been increasingly difficult to work at Nobles. I tried to sort this amicably through a grievance meeting but nothing really prevailed and if anything the treatment got worse."
28. I accept Mr Katz's submission that in so far as the Claimant's allegation of deteriorating treatment since the "complaint" refers to the period after the meeting which she convened on 13<sup>th</sup> September, there is no evidence of anything happening between then and the 22<sup>nd</sup> September 2023, except the holiday issue having arisen.

29. I am satisfied that the Claimant, whom I found to be a frank and open witness, perfectly capable of proper self-reflection, had genuinely and no doubt sensibly in terms of her own well-being at that time, concluded that she could no longer continue to work for the Respondent particularly because of the personal situation that had emerged between her and B. However, what she has not been able to do is also to satisfy me that there was any actual conduct on the part of the Respondent or his agents which separately or cumulatively amounted to a fundamental or repudiatory breach, that is one which goes to the root of that contract and shows that her employer no longer intends to be bound by one or more of its essential terms. Rather the evidence shows that from the time they were first informed of the Claimant's feelings the Respondent sought to facilitate her remaining in the business, where she performed an essential and important role in challenging conditions, whilst maintaining a professional relationship as necessary with B as she had said she was capable of doing.
30. Applying the relevant law to these facts, I find that the Claimant has not shown that she was constructively dismissed. The claim of unfair dismissal is accordingly dismissed.

Employment Judge Lancaster

Date: 1<sup>st</sup> August 2024