



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Deane

Respondent: The Governing Body of Stonyhurst College

HELD AT: Manchester

ON: 28 March 2017

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: Dr D Deane, husband

Respondent: Mr L Rogers, solicitor

JUDGMENT AT PRELIMINARY HEARING

1. The claim is not struck out.
2. The claimant having confirmed at the preliminary hearing that her entire claim consists of the complaints in Schedule A and Schedule B, the tribunal will not adjudicate on any other complaint.

DEPOSIT ORDER

1. Employment Judge Horne considers that the allegations in Schedule B have little reasonable prospect of success. Accordingly:
 - 1.1. the claimant is ordered to pay a deposit of £100.00 by 4pm on 18 April 2017 as a condition of proceeding with her allegation that she was constructively dismissed; and
 - 1.2. the claimant is ordered to pay a separate deposit of £100.00 by 4pm on 18 April 2017 as a condition of proceeding with her claim for damages for breach of contract.

CASE MANAGEMENT ORDER

1. The claimant is not required to pay a deposit in order to pursue her complaint of unfair dismissal as set out in Schedule A.
2. The hearing currently listed for 27 April 2017 is postponed.
3. The final hearing will now take place on **4 July 2017** with a time allocation of **one day**. It will be heard by an employment judge (other than Employment Judge Horne) sitting **without** lay members.
4. The case has been listed for hearing to determine the complaint in Schedule A and any remedy issues that might arise.
5. If the claimant pays the deposit in respect of one or both allegations in Schedule B, the file will be referred to Employment Judge Horne (or such other judge as the Regional Employment Judge may nominate) who will consider whether to add further days to the time allocation having regard to the representations made by the parties at today's hearing.
6. The respondent must deliver its amended response to the tribunal and the claimant no later than 4pm on 2 May 2017.
7. The amended response must, in particular, indicate whether the respondent relies on a potentially fair reason in the event that it is found to have dismissed the claimant.
8. No later than 4pm on 9 May 2017, each party must make a reasonable search for all relevant documents in that party's control and deliver a copy of all such documents to the other party.
9. A document is relevant if it assists a party's case or undermines a party's case.
10. The parties are reminded of their continuing obligation to disclose relevant documents.
11. The respondent must prepare the bundle of documents for use at the final hearing. The bundle must be contained in one or more files that can be opened flat. It must have an index. Pages must be consecutively numbered. They must appear in chronological order unless there is a good reason for them appearing in a different order.
12. No later than 4pm on 17 May 2017, the respondent must send to the claimant a draft index for the bundle to be used at the final hearing. The parties must produce an agreed index no later than 4pm on 31 May 2017. The respondent must then immediately send a copy of the agreed bundle to the claimant.
13. By 4pm on 14 June 2017, the parties must deliver to each other signed witness statements from all the witnesses on whose evidence they rely. The claimant complies with this paragraph in relation to her own evidence by delivering a copy of her own witness statement.
14. This order does **not** require the parties to exchange their witness statements simultaneously. If a party considers that the other party has failed to deliver its witness statements on time, it must deliver its own witness statements to the other party in compliance with the order and immediately inform the tribunal of the other party's non-compliance.

15. Witness statements must be full and complete and must contain all the evidence upon which the party calling the witness relies. The statements must, however, be confined to the evidence that is relevant to the issues to be determined by the tribunal. They must be divided into separate numbered paragraphs. Evidence of communications covered by “without prejudice” privilege must not be included. If a witness statement refers to documents, it must indicate the page of the agreed bundle where each document can be found.
16. If the maker of a witness statement does not attend the hearing to be cross-examined, the tribunal may nevertheless consider the evidence contained in the witness statement, but is likely to give the statement reduced weight.
17. The respondent must ensure that, in addition to the parties’ own copies, 2 copies of the bundle and 3 copies of the witness statements are brought to the tribunal no later than 9.15am on the first day of the hearing.

SCHEDULE A

1. The claimant complains of unfair dismissal contrary to sections 94, 95(1)(a) and 98 of the Employment Rights Act 1996.
2. Her case is that, at a meeting on 9 March 2016, she informed the respondent’s Headmaster that she had been offered another job, and would probably accept, but she did not say that she was resigning. The respondent knew that the claimant would not be in a position to make an informed choice about whether or not to resign until she had received confirmation from her new employer about the terms and conditions of her new job.
3. After the meeting, the Headmaster and his personal assistant asked the claimant on four occasions (twice orally, twice in writing) to write a letter of resignation.
4. The respondent pretended that the claimant would be required to give notice by 22 March 2016 in order for it to be effective by 31 August 2016, when in fact the claimant did not need to give notice until 30 April 2016 for it to have that effect. She was deceived into thinking that she had to resign immediately or risk not being able to take up her new employment in the event that the terms were attractive. Put another way, she was “inveigled” into resigning within the meaning of *Caledonian Mining Co Ltd v. Bassett* [1987] IRLR 165.
5. Even if there had been no deception, the claimant contends that this was a forced resignation. The respondent insisted on the claimant resigning because it had prematurely appointed her successor. On 15 March 2016, without waiting to see if the claimant would actually resign or not, it had offered the claimant’s role to an external candidate. The claimant was therefore given no choice but to resign, such that in reality it was the respondent that terminated the contract.

SCHEDULE B

1. The claimant also wishes to pursue the following complaints:
 - 1.1. a claim for damages for breach of contract; and
 - 1.2. unfair constructive dismissal contrary to sections 94, 95(1)(c) and 98 of the Employment Rights Act 1996.
2. The damages claim is based on a single express term of the contract. This was her contractual entitlement to a salary of £43,000 subject to incremental progression. It is her case that on 6 May 2013 the respondent breached that term by unilaterally reducing her salary to £30,467 without increments. She accepts that she agreed to the variation, but contends that her agreement was void because she was given no adequate explanation, it was unfair, and she was in a very weak bargaining position owing to her poor health, her degree of her family's integration into the respondent's community and her dependence on her employment for her living accommodation and her children's education.
3. As a result of the alleged breach, she suffered a monthly loss of earnings until her employment ended.
4. Here is the claimant's argument that she was constructively dismissed. She resigned in response to a fundamental breach of the following terms of her contract of employment:
 - 4.1. the express salary term mentioned above;
 - 4.2. the implied term of trust and confidence; and
 - 4.3. a further implied term that her living accommodation would be reasonably habitable.
5. The ways in which the respondent allegedly conducted itself so as to destroy or seriously damage trust and confidence are set out in the claimant's statement at paragraphs B1 to B44.
6. The living accommodation implied term was allegedly broken when it flooded in December 2015 causing mould growth and the respondent failed to clear the mould from January 2016 onwards.

SUMMARY REASONS FOR MAKING DEPOSIT ORDER

Purpose of these reasons

1. These summary reasons should not be confused with the written reasons to which the parties are entitled under rule 62(3) of the Employment Tribunal Rules of Procedure 2013. Written reasons will not be provided unless a party makes a request in writing within 14 days of the date on which this order is sent to the parties. The purpose of these summary reasons is to enable a tribunal conducting the final hearing to conduct the comparison required by rule 39(5). If

the claimant pursues the Schedule B allegations and loses for substantially the same reasons as are set out here, the tribunal must consider whether to make a costs order.

Claim for damages

2. The weakness in the claim for damages for breach of contract is that the claimant agreed to the variation. Whilst the tribunal is likely to have some sympathy for her personal circumstances at the time of agreeing to the variation, they are unlikely to render the agreement void.
3. The respondent provided consideration for the variation by releasing her from the requirement to undertake teaching duties. Whether relieving her of those duties was beneficial or not is unlikely to matter, since the tribunal cannot enquire into the adequacy of consideration.

Constructive dismissal

4. I do not express any view as to whether the events described in paragraphs B1 to B44 actually happened. Nor can I predict what the findings of the tribunal are likely to be in this regard.
5. The claimant's difficulty is that, in April and May 2016, she repeatedly attempted to retract her resignation. Her 5 May 2016 letter outlined some of the respondent's actions which she now contends breached the trust and confidence term. Having referred to those actions, her letter informed the Chair of Governors that she would like to continue to work for the respondent.
6. The conduct alleged at paragraph B1 to B44 was known to her by 5 May 2016 when she formally asked to keep her job. Paragraph A10 of her statement seeks to argue that her "realisation that her work experience was not a random series of events of her own making, but a continuous pattern of harassment, only became clear in May [2016]". If, by this, the claimant means that she only discovered about the harassment after 5 May 2016, the tribunal is unlikely to accept it. Very little happened after 5 May 2016. The nature of the alleged harassment is such that the claimant would be likely to perceive it that way at the time it occurred. The claimant refers to some comments allegedly by Mr Cowdall about the behaviour of the Headmaster, but these appear to have been made prior to the claimant writing her 5 May 2016 letter.
7. In my view, these facts undermine the claimant's case in the following ways:
 - 7.1. It will be hard for the tribunal to find that, at the time the claimant decided to resign, the relationship of trust and confidence had been destroyed or seriously damaged.
 - 7.2. Even if there had been a serious breakdown of trust and confidence, the tribunal is likely to find that this was not an effective cause of her resignation.
 - 7.3. There is also a risk that the tribunal will find that, by seeking to retract her resignation during her notice period, the claimant affirmed the contract.

Employment Judge Horne

Date: 28 March 2017

SENT TO THE PARTIES ON

30 March 2017

FOR THE TRIBUNAL OFFICE