



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs M Foster

v

**The Trustees for the Colton Institute
Sports and Social Club**

PRELIMINARY HEARING

Heard at: Leeds

On: 25 September, 22 & 23 October 2019

Before:

Employment Judge Shulman

Appearance:

For the Claimant:

In Person

For the Respondent:

Mr K Ali, Counsel

JUDGMENT

The Judgment of the Tribunal is that the claim for unfair dismissal is hereby dismissed.

REASONS

Introduction

1. In this case Mrs Foster was employed by Colton Institute Sports and Social Club as a Bar Steward from 27 November 2013 until 28 April 2019, although she delivered her resignation on 24 March 2019 and did not work thereafter. The respondent is a Sports and Social Club for private members. The claimant complains to this Tribunal that she was constructively dismissed by the respondent.

Issues

2. The principal issue in this case is whether the claimant was entitled to terminate her contract of employment by reason of the conduct of the respondent. Additionally, as this is a 'last straw' case, whether there was a breach of trust

and confidence based on a series of acts (or omissions) with the last act contributing to that breach.

The Law

3. The Tribunal has to have regard to section 95(1)(c) of the Employment Relations Act 1996 (ERA) which defines what effectively constitutes a constructive dismissal, which if proved will then enable a tribunal to go on to decide whether a dismissal is fair or unfair within the meaning of section 98 ERA.
4. Guidance on what is known as 'the last straw' doctrine can be found in the case of Lewis v Motorworld Garages Ltd [1986] ICR 157 CA and Omilagu v Waltham Forest London Borough Council [2002] ICR 481 CA. Essentially the act constituting the last straw does not have to be of the same character as earlier acts but (and I am paraphrasing) an entirely innocuous act by the respondent will not qualify, even if the claimant genuinely but mistakenly interprets the act as hurtful. The test is an objective one.
5. On the other hand, where there is only one act which causes the resignation that must go to the root of the contract and constitute a fundamental breach - see Western Excavating (ECC) Limited and Sharp [1978] ICR 221 CA. The onus of proving dismissal in a case of constructive dismissal is on the claimant and is a rigorous one.

Facts

6. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):
 - 6.1. During the latter part of her employment with the respondent the claimant was an unhappy person in her relationship with the club committee.
 - 6.2. The claimant gave evidence of many issues in her witness statement, but understandably, as she was not represented, much of it was not in chronological order, so that in the time available some of her evidence may not have come out in order, but that does not affect the decision which has been made by the Tribunal.
 - 6.3. The claimant's reporting line was somewhat confusing and could have been to the Bar Committee, her husband, who was at all material times Chairman of the Bar Committee, or to the Chairman of the Club or to the Committee. Of itself this confusion does not, surprisingly, have contributed on the evidence to the unhappiness of the claimant.
 - 6.4. As a general point the claimant was unhappy with the lack of responsibility being taken by the Committee. For example, in September 2018 the claimant was concerned about the collection of membership subscriptions with which the claimant had to deal because the Committee was not pulling its weight. Further, on a date unspecified, when the claimant paid extra wages to support an event it was suggested that the claimant had been overstaffed. Indeed, towards the end of summer 2018 the claimant felt she was under scrutiny by members of the Committee. She felt that some did not like her. The claimant also felt that there was interference with her role, although the

claimant did accept in her evidence that none of her duties were taken away from her.

- 6.5. The claimant also experienced problems with a Club Treasurer, particularly towards the end of 2018, but he was replaced by Mrs Louise Bulmer, who gave evidence before the Tribunal. But then the claimant did not think that Mrs Bulmer acted quickly enough to arrest what was a difficult financial situation. The Committee finally put in place a plan which they wished to discuss with the claimant, but a meeting for that purpose on 6 March 2019 was unavoidably cancelled and the claimant was content to accept the plan by email instead, which she did the next day. We find that there was initial misunderstanding of the claimant's part in the plan, which in fact was aimed at improving the financial situation of the Club, which all, including the claimant, felt was necessary. In a very short time after receipt of the plan, whilst grumbling about it, the claimant accepted the changes, although she did not adhere to one of them in particular, namely, the filling out of timesheets for staff, which was understandably aimed at keeping an eye on wages.
- 6.6. The claimant was also upset because the Committee wanted to know her salary package which she thought was personal.
- 6.7. Despite the tension that was obviously building up between the claimant and the Committee there was only one refusal by the claimant to complete the timesheets and there was no disciplinary action taken against the claimant ever as far as the evidence shows and there is nothing to suggest the claimant was other than a good employee.
- 6.8. There were however, some aggravators in the relationship. The first came in June 2018 when the then Chairman behaved aggressively to the claimant, jabbing her keys in the face of the claimant. The claimant complained to the Committee, who investigated the incident and who then asked the Chairman to apologise. She never did. The Chairman resigned as Chairman by walking out of a meeting but she returned to the Committee after everyone thought that she had resigned as a Committee member and her presence was accepted. There is no doubt that this hurt the claimant but as Mr Gibbons, the Club Secretary, who gave evidence before us, said the former Chairman had not resigned from the Committee and constitutionally she was entitled to be there. No evidence was called to the contrary and the Tribunal must accept the evidence that Mr Gibbons gave.
- 6.9. Then there was the matter of health and safety policy, where the claimant, doing her best, introduced a health and safety consultant, known as such to the Club, to give advice. The claimant felt that her nose had been pushed out over this but in fact the Committee, whose job it was, progressed what the claimant had started. In any case, unchallenged by the claimant, Mr Gibbons said that there had already been a health and safety policy since October 2014 and he further produced evidence that the claimant knew of it. The claimant denies this, but since the claimant was doing her best in 2018 it is not a matter on which we have to find but a fact one way or the other.
- 6.10. Then there was the issue of children being in the Club in the evening and at night, which clearly irritated the claimant, particularly as she felt there

was a rule that children should be out of the Club after 10pm. To make matters more difficult some of these children belonged to members of the Committee. In any case Mrs Bulmer satisfied us that at the material time there was no 10pm rule and as the claimant did not complain to the Committee about this matter things were never properly tested.

- 6.11. We come now to the final incident and therefore the 'last straw'. The claimant said as much in her evidence to the effect that the so-called refusal to take her complaint further about this matter was "pivotal" in her decision to resign. What happened was that on 8 March 2019 the claimant arrived at work to meet the stocktaker of the respondent. A Mr Tony Hessian, a Committee member, then arrived unannounced. The claimant thought that he was drunk. He advised the stocktaker that some of the Committee held the claimant responsible for the state of the respondent's accounts and that as a result there would be a monthly stocktake going forward as opposed to a quarterly one and this was in the plan. The claimant identified Mr Hessian's movements as uncoordinated and she smelled his breath being strongly smelling of alcohol. The groundsman apparently saw Mr Hessian trip and fall on entering the Club. The claimant was concerned about Mr Hessian being in the cellar in that state but Mr Hessian insisted on staying and the claimant left. She was very upset. The Committee complaint was not handled well. Mr Hessian was interviewed but the claimant was not and neither was anybody else and this was enough for the claimant to resign. Worthy of mention is that it turned out that Mr Hessian's condition may have been medical and not drunkenness. It is alleged that Mr Gibbons wrote to the claimant about this. A search for the relevant email has not revealed anything. In any case the real issue here is Mr Hessian's state and behaviour whatever the cause.
 - 6.12. It is worthy of note that the claimant said in evidence that the main issue for her was poor communication, excluding the Hessian incident.
 - 6.13. The claimant gave notice to resign on 24 March 2019. She alleges change of role and personal situations that she has had to deal with. We have found that her role did not change but under that heading the Hessian incident is mentioned but not in an assertive manner. The personal situations seem to be mixed up with those of the role but are descriptive of the claimant's feelings. She then raised her personal health and safety, in particular her relationship with the past Treasurer and the former Club Chairman who resigned as such and the fact that she had still not received an apology from her. She mentioned the children of Committee members, Mr Hessian again, the outgoing Treasurer again and process. There are other matters which are not now necessary to rehearse.
7. Determination of the Issues (after listening to the factual and legal submissions made by and on behalf of the respective parties):
 - 7.1. Was the claimant entitled to terminate her contract of employment by reason of the respondent's conduct?
 - 7.2. The Tribunal has set out a catalogue of incidents that the claimant experienced about her former employers. Are these complaints any more than just that?

- 7.3. The claimant had a lot of complaints which are set out in paragraph 6.4 of this decision, but did they undermine her trust and confidence in the respondent as a matter of law?
- 7.4. Was the financial situation of the Club conduct by the respondent against her? Whatever Mr Hessian said about her part in the finances it is clear that the respondent could not possibly hold the claimant responsible for the financial situation of the Club or indeed the necessary changes.
- 7.5. Why should Committee members not know about the terms and conditions of their employees? Even one of their most important employees?
- 7.6. The issue with the children although upsetting to the claimant and putting her in a difficult position did not breach club rules.
- 7.7. The incident in June 2018 involving the former Club Chairman was very unpleasant for the claimant but the Tribunal is satisfied that in investigating that issue the respondent did its best.
- 7.8. The Club did have a health and safety policy before 2018 – what was the conduct that the respondent did wrong in that case?
- 7.9. The Tribunal was of the view that these incidents do not satisfy the test of conduct leading up to a last straw dismissal.
- 7.10. As to the last straw itself the respondent could most definitely have handled the incident relating to Mr Hessian better and it did not, but can that incident stand alone to go to the root of the claimant's contract of employment thereby entitling the claimant to resign. The Tribunal thinks not. In all the circumstances the claimant was not dismissed by reason of the respondent's conduct and her claim for unfair dismissal is hereby dismissed.

Employment Judge Shulman

Date 28 October 2019