



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Linton

**Respondent:** Voluntary Action Broxtowe

**Heard at:** Nottingham

**On:** Wednesday 29 March 2017 and Thursday 30 March 2017

**Before:** Employment Judge Hutchinson (sitting alone)

## Representatives

**Claimant:** In Person

**Respondent:** Lee Burgin, Chief Executive

# JUDGMENT

The Employment Judge gave judgment as follows:-

The claim of unfair dismissal fails and is dismissed.

# REASONS

## Background and Issues

1. The Claimant presented her claim to the Tribunal on 25 November 2016. She had been employed by the Respondent's from 4 April 2001 until her resignation on 29 July 2016. Her claim is of constructive unfair dismissal only.
2. She says the reasons for the resignation were a catalogue of events. She says that in September/October 2015 she was bullied by Linda Button the former Chief Officer of the Respondent's who she says did not believe she was ill. She says that she complained to the Trustees about this.
3. She complains that other colleagues were shouted at also by Linda Button and at a meeting with one of the Trustees David Bryan in February 2016 they complained about Ms Button's behaviour.
4. Ms Linton complains that in spring of 2016 she offered to accept voluntary redundancy. There was then a meeting on 25 May 2016 where she was told that they could not accept her request for voluntary redundancy and there was a discussion about a settlement agreement.

5. On 31 May 2016 she says that she was threatened by Linda Button again. Ms Linton complains that the final straw was that on 6 July 2016 Respondent's withdrew their offer of voluntary redundancy and she was belittled at the meeting.

6. The Claimant says that she resigned because of this behaviour which amounted to a fundamental breach of her contract of employment. The term breached was the term of mutual trust and confidence. She says she resigned because of that breach and did not delay too long.

### **Evidence**

7. I heard evidence from the following:-

- The Claimant
- Anthony Scarfe
- James Towler
- Mark Barrable

These others were former colleagues of the Claimant

For the Respondent's I heard from:-

- Linda Button, former CO
- David Bryan, Treasurer and Trustee
- Wendy Whiting, Chairman of Trustees
- Sue Osborn, a former colleague

8. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

9. Where there was a conflict of evidence I preferred the evidence of the Respondent's. Their evidence was consistent and credible. My view was that the Claimant was not consistent. She sought to interpret what happened to suit her own case. I am satisfied that the Claimant did not have any good reason to resign at all. I am satisfied there was no offer of voluntary redundancy as she alleged. There was no evidence to support her contention. There was only a discussion about her leaving her employment by agreement.

### **Facts**

10. Voluntary Action Broxtowe (VAB) is a small charity. It employs 2 permanent staff namely:-

- Chief Officer – This was Linda Button but is now Lee Burgin
- Office Manager—This was the Claimant but is now Edward Lyons

11. They also have 3 part time grant funded managers. Their income is just £250,000 per annum. They have rented accommodation and provide a range of community services and in particular:-

- Teaching English as a foreign language
- Older persons befriending service
- A removal service for the community known as "Move It"
- Rent rooms and offices
- A Friday tea and coffee morning

12. The organisation is run by Trustees and at the time of the Claimant's resignation Wendy Whiting was the Chair and David Bryan was Treasurer and there were 3 other Trustees.

13. The Claimant commenced her employment on 4 April 2001. She worked 24 hours per week. Her contract of employment is at page 32 and the staff handbook is at pages 139 to 154. The handbook contains reference to a grievance procedure.

14. Ms Linton and Linda Button had worked together for 9 years. They had a good working relationship. At no stage during her employment did Mrs Linton raise any formal grievance against Linda Button.

15. Like many charities it has faced financial pressures as a result of the loss of funding from the local authority and as a result a review was commissioned in September 2015. That review was undertaken by Lee Burgin.

16. On 25 August 2015 Ms Linton commenced a period of sickness absence following a visit to her dentist when she suffered bruising to her stomach lining and inflammation. Her GP's initial diagnosis was gastroenteritis, but this was subsequently revised to gastritis. She supplied two doctors' notes (pages 226-9). After 3 weeks she returned to work on 22 September.

17. On her return she was met by Linda Button. I am satisfied the Claimant felt she was "in the dog house" and said so. I am also satisfied that the interview was not handled well by Linda Button. Linda Button indicated to her that she had been off for a rather long time with gastroenteritis. Ms Linton became defensive. She felt that her integrity was being impugned. It was not surprising. She was a long serving, loyal senior member of staff with a good attendance record and was clearly upset by what Linda Button had said. Asking her whether there was any underlying reason was not appropriate in the circumstances. The Claimant became upset and said she would get more evidence. The meeting broke down after a few minutes and the Claimant contacted her doctor to get some more information.

18. She told Mr Bryan who was in the office next door that she wanted to raise matter with the Board.

19. The Board met on 29 September 2015 and at the end of the meeting Ms Linton was called in. Mr Bryan made a note (page 165). The note was not shared with anyone else but I am satisfied it is a true reflection of what was said. The main issue was that Ms Linton felt that Ms Button had accused Ms Linton of not being genuinely ill. Ms Button tried to reassure the Claimant that she had not questioned the reason for her absence. The Claimant was reassured by the Trustees that the reason for her absence was not in question and the matter was resolved. After the meeting the Claimant took no further action. It was not raised again until her resignation letter. She made reference to it. I am satisfied that there were no further allegations made by the Claimant against Linda Button until her resignation.

20. In the hearing I heard from Anthony Scarfe and James Towler who it is alleged were both bullied by Linda Button. Neither of these men ever raised a grievance about Linda Button and no issue was raised by the Claimant with any

Trustee except in a brief discussion with Mr Bryan in February 2016.

21. I am satisfied that the discussion was an informal one with Mr Bryan when he was at work and he had asked the Claimant and Mr Scarfe how they were. Ms Linton referred to the incident that had taken place in September again and blamed Linda Button for a tense atmosphere in the office. A tense atmosphere is a long way from bullying. The Claimants' witnesses described having group staff meetings on Wednesdays to support each other. I am satisfied that Ms Button was not aware of any issue with the staff. It was not serious enough for them to raise any grievance about it and Mr Bryan was specifically asked not to convey this to the other Trustees or take any action on it.

22. Everyone at the charity was aware that there was to be a reorganisation and there was a possibility of redundancies. In March the Claimant approached Linda Button to propose voluntary redundancy for herself.

23. There was a meeting on 27 April between the Claimant, David Bryan and Linda Button to discuss the possibility. Mr Bryan and Ms Button said that they needed to work out some figures and asked for her P60's. I am satisfied that there was no concluded agreement, purely a discussion about the possibility. The Claimant lobbied Mr Bryan about this. She spoke to him in the office saying that she wanted to leave as soon as possible. I am satisfied that there was no acceptance in principle of the proposal as described by the Claimant.

24. Shortly after the meeting the Claimant went on holiday. The Board met on 18 May 2016 to discuss the proposal. There was an ongoing need for an office Manager. There was no redundancy situation in respect of her position. On the Claimants' return on 25 May there was a meeting with Wendy Whiting and Linda Button. At that meeting she was told that after discussions with ACAS they were not able to offer her voluntary redundancy. They talked about the possibility of a severance agreement. There were no details agreed and no sums were discussed or dates of termination indicated. They all agreed that they should keep the discussions confidential.

25. On 31 May the Claimant sought legal advice. The legal advice was brief and as she described to me it took her 15 minutes on the telephone.

26. On 2 or 3 June the Claimant told Linda Button about this. She told Ms Button that she wanted her legal fees paid. Ms Button told her that she had been a bit early to take advice. The Trustees then took legal advice.

27. On 6 July there was a Trustee meeting. The Trustees decided they could not offer a severance package. It could not be justified. It would cost a considerable sum of money to make the Claimant redundant and they would then have to engage someone else into the same position.

28. After the Trustees' meeting there was a meeting between Linda Button, Wendy Whiting and the Claimant. The meeting did not last long. The Claimant was told that she could not have voluntary redundancy and that she would have to stay. She was told that there was still a job for her under the same terms and conditions I am satisfied that Linda Button did not adopt a sneering tone or that she acted in an aggressive way to the Claimant. The Claimant was clearly unhappy that she was not going to be made redundant. She became angry and wanted to continue to argue her case. The meeting did not go well and she was asked to leave and Linda Button raised her voice to tell her leave when she

didn't.

29. After the meeting without saying anything to anyone the Claimant left the office and never returned. She did though apologise for her behaviour in an e-mail at page 203. She said;

“Thank you for meeting with me today. I sincerely apologise for any upset caused to yourself at that meeting. I look forward to hearing from you in writing the outcome of the Trustees meeting regarding my employment situation, also to receive a copy of my current job description as it stood at the date of the meeting with yourself and Wendy at the end of May when I returned from holiday.

I hope you understand that I am going home as from sending this email as I don't feel too unsettled to work effectively and cannot hide my feelings from my colleagues which would not be good for VAB”

30. On 11 July Linda Button on behalf of the Respondent's wrote to the Claimant in reply to that email to confirm the position which is at page 205. It refers to the Claimant's request for voluntary redundancy and sets out that they wished the Claimant to continue in her role. There would be no change to her hours, pay and conditions.

31. Ms Lintons' letter of resignation was sent in 3 weeks later on 29 July 2016 after she had taken some legal advice (page 207).

32. The letter of resignation complains of a number of matters, in particular:-

- The withdrawal of the offer of voluntary redundancy in bad faith
- Threatening by the Chief Officer Linda Button both at that meeting and before
- Undermining her position as manager and bullying colleagues
- She described the behaviour of Linda Button on 6 July as the last straw

33. Her resignation was accepted on 5 August (page 212).

### **The Law**

34. The claim of unfair dismissal is made under Section 94 of the Employment Rights Act 1996 (ERA).

35. Section 95 provides:-

“(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)..., only if):-

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(c) 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.”

36. The burden of proof is on the Claimant. I referred myself to the leading case of **Western Excavating v Sharp** [1978] IRLR 27 CA. As Lord Denning in that famous case said:-

“An employee is entitled to treat himself as constructively dismissed if their employer is guilty of conduct which is a significant breach going to the root of the contract, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once.”

37. The Claimant in this case relies on the implied term of trust and confidence and I therefore referred myself to the case of **Malik v BCCI** [1997] IRLR 462 HL. As found in that case if conduct objectively considered is likely to cause damage to the relationship between the employer and the employee the breach of the implied obligation may arise. The motive of the employer cannot be determinative or even relevant judging the employee's claim that the implied term has been breached. Nor is it necessary that the employee's confidence is actually undermined. The breach occurs when the prescribed conduct takes place.

38. I also referred myself to the case of **Omilaju v Waltham Forest London Borough Council** [2005] ICR 481 CA. The Court of Appeal explained that the act constituting last straw does not have to be of the same character as the earlier acts, nor must it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of her trust and confidence in the employer.

39. The test of whether the employee's trust and confidence has been undermined is objective, and while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test.

40. In summation therefore:-

40.1 The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment.

40.2 It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee.

40.3 Any breach of the implied term of trust and confidence will amount to a repudiation of the contract.

40.4 The test of whether there has been a breach of the implied term of trust and confidence is objective.

40.5 A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is a last straw in a series of incidents.

## Conclusions

41. I am not satisfied the Claimant was bullied by Linda Button or indeed that Linda Button has bullied anyone else at the Respondent organisation.

42. Whilst I am satisfied the meeting of 22 September was badly handled by Linda Button it was not the cause of the Claimant's resignation. That matter had been resolved at the meeting of 29 September with the Trustees and she was reassured by the Trustees that they did not doubt the absence was genuine. The Claimant had accepted that reassurance.

43. The Claimant resigned because she asked for voluntary redundancy and the request was declined. The refusal of her request did not amount to a fundamental breach of her contract. I am satisfied that, viewed objectively, the behaviour of the Respondents did not amount to a breach of the implied term of mutual trust and confidence.

44. In particular I am satisfied in this case:-

- The Claimant was never offered voluntary redundancy
- There was no withdrawal of any offer in bad faith or otherwise
- The Claimant asked for it to be looked into
- The Respondent did look into it
- There was no redundancy situation in respect of her position
- The Respondent needed an office manager
- They looked into a severance package as a possibility but decided against this
- The Respondent's did not have the funds to pay for the severance package

45. I am satisfied that on 6 July the Claimant was told the decision and was very disappointed and became upset. When Wendy Whiting and Linda Button tried to draw the meeting to a close the Claimant was reluctant to leave. Linda Button only raised her voice to tell her to leave after the Claimant had declined to do so. It can be seen from the email the Claimant sent at the time (page 203) that she raised no issue about the conduct of Linda Button and apologised for her own.

46. The Claimant did leave and then went home never to return having never raised any formal grievance at any stage under the Respondent's grievance procedure.

47. I am satisfied also that;

- At no meeting was the Claimant threatened or bullied by Ms Button
- The Claimants position was not undermined by Ms Button
- Ms Button had not bullied any of the other staff

48. I am therefore satisfied in this case the Claimant has not been able to establish any fundamental breach of the implied term of mutual trust and confidence in her contract of employment or that she resigned because of the breach. The claim therefore fails and is dismissed.

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Employment Judge Hutchinson

Date 24 May 2017

JUDGMENT SENT TO THE PARTIES ON

07 June 2017

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FOR THE TRIBUNAL OFFICE