



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr M Ahadpour

and

Respondent

WDFG UK Limited

Held at Reading on

25 July 2018

Representation

Claimant: In person

Respondent: Ms M Bayoumi, counsel

Employment Judge

Mr S G Vowles (sitting alone)

RESERVED JUDGMENT

Evidence

- 1 The Tribunal heard evidence on oath and read documents in a bundle provided by the parties.

Unfair Constructive Dismissal – Section 95(1)(c) and 98 Employment Rights Act 1996

- 2 The Claimant resigned, with notice, from his employment as Supply Chain Manager on 28 September 2016. The effective date of termination was 28 October 2016. The complaint of unfair constructive dismissal fails and is dismissed.

Unpaid Holiday pay – regulation 30 Working Time Regulations 1998

- 3 The claim for holiday pay was withdrawn and is dismissed.

Reasons

- 4 This judgment was reserved and written reasons are attached.

REASONS

SUBMISSIONS

Claimant

- 1 On 14 March 2017 the Claimant presented complaints of unfair constructive dismissal and unpaid holiday pay to the Tribunal. The holiday pay complaint was withdrawn on 18 December 2017.

Respondent

- 2 On 26 April 2017 the Respondent presented a response in which the claim was resisted.

EVIDENCE

- 3 The Tribunal heard evidence on oath from the Claimant Mr Mohammed Ahadpour (Supply Chain Manager).
- 4 The Tribunal also heard evidence on oath on behalf of the Respondent from Mrs Jane Cursons (Human Resources Manager) and Mrs Mandeep Kaul-Virdi (Head of Supply Chain UK).
- 5 The Tribunal also read documents in a bundle provided by the parties.
- 6 From the evidence heard and read the Tribunal made the following findings of fact.

FINDINGS OF FACT

- 7 The Respondent WDFG UK Limited (World Duty Free) operates WDF stores throughout the UK.
- 8 The Head of Supply Chain for the UK, Mrs Kaul-Virdi, had 4 employees reporting directly to her. There were 3 Supply Chain Planning & Purchasing Managers and the Supply Chain Operations Service Manager.
- 9 The Claimant was Supply Chain Manager (Luxury). The others were Supply Chain Manager (Beauty) and Supply Chain Manager (Liquor, Tobacco, Food, Electrical and Souvenirs). There were 6 Supply Chain Assistants and Planners who reported into each of the 3 Supply Chain Managers.
- 10 The Claimant's contract of employment included the following:

“Job Title

2.1 Your job title is Supply Chain Manager – Luxury. The main duties of your position are set out in the job description. Your duties will be fully explained to you when you commence employment with the Company. It is the Company’s intention that any oral instructions or written descriptions of your job duties and responsibilities should serve as a guide to the major areas for which you will be accountable.

2.2 The changing nature of the business means the obligations upon you will inevitably vary and develop, therefore the Company reserve the right at any time during your employment, upon reasonable notice, to require you to undertake duties which fall within your capabilities.”

11 The Claimant’s job description was as follows:

“Principal accountabilities

1 To build strong relationships with the key stakeholders to ensure replenishment and supply chain strategies are developed and executed effectively up and down the supply stream.

2 To lead and develop replenishment and supply chain strategies which supports the delivery of the category strategies and WDF business plan.

3 Management of the replenishment systems to optimise stock management.

4 To oversee the supply chain and stock management requirements of the category.

5 To build professional business relationships with suppliers at the appropriate contact level.

6 Manage, motivate, develop and coach the category supply chain team.”

12 Although not a requirement of the Claimant’s role as Supply Chain Manager (Luxury), he would often accompany his colleagues in the buying team to product selection meetings at which members of the buying team select products to sell in WDF stores. Most of the product selection meetings in the “Luxury” category would take place outside of the UK. For the other categories (Beauty and Liquor), the majority of the meetings took place in the UK.

13 In August 2015 the Dufry Group acquired the majority shareholding of WDF, and, together with Nuance (another travel retail brand), the three companies were consolidated into one business in order to streamline the organisation, avoid duplication of roles and consolidate functions in headquarters and centralise activities to achieve savings and efficiencies. The Dufry Group headquarters was based in Basel, Switzerland.

- 14 In June 2016 WDF launched a consultation process in respect of the proposed changes across the business in the UK following the Dufry acquisition. There were collective consultation meetings held on 6, 9, 16 and 23 June 2016, and 4 and 28 July 2016.
- 15 The role of each employee was assessed against five categories as follows:
- (a) No change to role
 - (b) Broadly similar role
 - (c) Borderline changes to role
 - (d) Alternative role
 - (e) Role disappears entirely.
- 16 The Claimant fell into category (b) which was defined as: *“Broadly similar role – some changes may occur, i.e. job title, reporting line, functional change, but the new role is broadly the same as the previous role and is continuing.”* If a role fell into this category, individual consultation would not take place with the person in that role.
- 17 After the Dufry takeover in 2015, the Global Supply Chain Director directed that the supply chain team should not attend product selection meetings in the future. This direction applied to each one of the supply chain teams, including the Claimant and his team. Another change was that the job titles of those in the supply chain would change to “global” job titles. This was to ensure they were consistent internationally following the Dufry acquisition but personnel in the UK could, and in fact did, continue to use their local job titles in email signatures, business cards and when liaising with suppliers in order to avoid confusion amongst their suppliers. Accordingly, the Respondent asserted that the only changes to the Claimant’s role were that he was no longer entitled to attend product selection meetings and he would have, in addition to his local job title, a global job title.
- 18 The Claimant disagreed. He claimed that his role of Supply Chain Manager (Luxury) was redundant and therefore he should have been subject to individual consultation.
- 19 In July 2016 Ms Kaul-Virdi and her line manager, Justin Suter, Head of Supply Chain for Europe, met with the Claimant and with the other 2 Supply Chain Managers in separate meetings to update them on the status of their roles going forward. All 3 Supply Chain Managers, including the Claimant, were reassured that their roles would be remaining in the business and that they were not at risk of redundancy. It was explained that their job titles would change to ensure that they were consistent globally but they could continue to use their local titles as well.
- 20 The Claimant said during his meeting that he believed his role was changing. Mr Suter asked him to document his concerns and he did so on 4 July 2016. The covering email read:

“Hi Justin

Further to our conversation last week, please find my letter detailing some of the changes which have/will affect my role by more than 50%.

I would like this matter reviewed as soon as possible as I believe that I should be having Individual Consultation to review the changes which have happened to my role and to have access to review and discuss other options.”

21 In the accompanying document, he set out the detail of his concerns as follows:

“Dear Justin

Further to our conversation last week and the publication of the organisation charts, I believe that based on the changes that have already happened and/or announced my role has changed significantly i.e. by well over 50%.

1 Demand Planning – in the structure announced earlier in the Year, Demand Planning is the responsibility of Phillip Kew reporting into the Buying Structure. I have been responsible for the Luxury Demand Planning function for the last 10 years and it has been my role to agree (or challenge) budgets, range sizes, stores ranged, the amount space, open to buy with the buyers. Since the change announced earlier in the year, the category buying managers and buyers are no longer discussing the range size, open to buy budgets, store ranging etc with me. This is what I classify as the “Merchandise Management” side of my role which seems to have disappeared. In the Luxury and Fashion world which has been my career for the last 30 years, my role would be defined as Merchandise Manager and with the changes which have already happened, completely redefines my role to a more administrative management role.”

2 Supplier Meetings [The Claimant set out overseas supplier selection planning meetings which he had attended in 2015 and 2016].

3 Expenses Another indicator of the changes to my role can be seen from the expenses for the 1st half versus previous years ... This decrease is not any business efficiency but rather an indication of the real changes to my role and function which has already happened as a product of the changes to the Global/Regional Luxury Buying Function.

4 SKU count being managed by my team. Previously approximately 5000 active skus, currently approximately 18000 skus with the move of Hermes and Bulgari to the CDC.

5 Ordering for TNG (Hermes & Bulgari) and VSB Spain with no extra resources, staffing and/or IT solutions. ...

6 The Luxury Process which has defined roles and responsibilities for Buying and Supply Chain through the stages of Luxury Product Lifecycle which has been the corner stone of how we have worked in the UK for the last 10 years has fundamentally changed as a consequence of the changes to the Buying Structure

with no similar change in the Supply chain Role. This has also had further consequence in the external perception of my role and function with the key account managers of my key suppliers.

Please let me know when we can discuss this further and how we need to involve HR and what the next steps are in reviewing the level of changes to my role.”

- 22 Mrs Cursons and Mrs Kaul-Virdi met with the Claimant on 7 July 2016 to discuss the concerns he had raised on 4 July 2016. Neither had considered it to be a formal grievance and it was not therefore dealt with under the Respondent's grievance procedure. At the meeting, Mrs Kaul-Virdi said that the Claimant contended that the role of Supply Chain Manager (Luxury) had always been different to the other 2 Supply Chain Manager roles. He said that his role was more of a merchandise role which incorporates elements such as demand planning, open to buy, range management and product selection. Mrs Kaul-Virdi told him that although some elements of his role were different, i.e. not attending the product selection meetings, his role had not changed. She understood that there was a benefit in being present at the product selection meetings but it was not part of his role.
- 23 Mr Suter met with the Claimant again on 9 July 2016 and confirmed that whilst his concerns and comments had been considered, it did not change the decision that his role remained and was not redundant.
- 24 On 15 July 2016 Mrs Cursons sent to Mrs Kaul-Virdi the new job descriptions for all UK supply chain roles which had been received from Dufry HR department in Basel, Switzerland. The new job description for the Claimant's role was incorrect. Mrs Kaul-Virdi replied to Dufry HR saying that they had mixed up the Logistic Manager role with the UK Supply Chain Manager role. However, the incorrect job description had been put on the Respondent's intranet and was seen by the Claimant.
- 25 On 15 July 2016 Mrs Kaul-Virdi confirmed to the Claimant in an email that the new job description *“isn't the right one. I have asked Jane to double-check, and she will look into it next week”*. She also spoke to the Claimant and the other 2 Supply Chain Managers about the issue and told them that she was trying to get them corrected but it was taking a while as it had to be changed in Basel by Dufry HR and not the UK HR team. Dufry had published 98 job descriptions for supply chain on the company internet and Mrs Kaul-Virdi explained that it took a long time for all of the correct versions to be published.
- 26 Mrs Kaul-Virdi and Mrs Cursons had confirmed to the Claimant that all that had changed was the Claimant's ability to attend product selection meetings and being assigned a global job title alongside his local job title. The Claimant's role remained and continued to remain going forwards. The Claimant did not accept this and indicated that he was interested in other roles. He subsequently applied for the role of Commercial Category Manager but was unsuccessful.

27 On 28 September 2016 the Claimant met with Mrs Kaul-Virdi and Mrs Cursons to inform them of his intention to resign on 30 September 2016 with immediate effect and to sue for constructive dismissal due to his concerns about the job description not being addressed. The Claimant did not supply a resignation letter but said that the reason for resigning was the job description and his grievance not being dealt with. Later, it was agreed between the Claimant and the Respondent that the effective date of termination of employment would be 28 October 2016. The Claimant worked up until this date.

RELEVANT LAW

Unfair Constructive Dismissal

28 Section 95 Employment Rights Act 1996 sets out the circumstances in which an employee is dismissed. Constructive dismissal is defined as follows:

(1) *For the purposes of this part an employee is dismissed by his employer if –*

(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.*

29 Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 - An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment 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. ... He must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.

30 WA Goold (Pearmak) Ltd v McConnell [1995] IRLR - There is a fundamental implied term in a contract of employment that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance they may have.

31 Hilton v Shiner Limited [2001] IRLR 727 - The implied term of trust and confidence is qualified by the requirement that the conduct of the employer about which complaint is made must be engaged in without reasonable and proper cause. Thus in order to determine whether there has been a breach of the implied term two matters have to be determined. The first is whether ignoring their cause there have been acts which are likely on their face to seriously damage or destroy the relationship of trust and confidence between employer and employee. The second is whether there is no reasonable and proper cause for those acts. For example, any employer who proposes to suspend or discipline an employee for lack of

capability or misconduct is doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence, yet it could never be argued that the employer was in breach of the term of trust and confidence if he had reasonable and proper cause for taking the disciplinary action.

DECISION

32 In the Claimant's witness statement, he summarised his claim as follows:

"Summary of Key Arguments

- *The Respondent knew as far back as May 2016 that my role and responsibilities were changing significantly due to the implementation of the Global Structure by Dufry who had acquired World Duty Free Group and held back this information from me during the Collective and Individual Consultation Process.*
- *The Respondent in effect demoted my role within the Luxury Hierarchy by implementing the Global Structure which changed the Department from being jointly managed by Buying and Supply Chain to being completely Buying led with Supply Chain as administrators.*
- *The Respondent had no intention of honouring the appeal process they agreed to at the 3rd Collective Consultation Meeting and had predetermined my appeal before even I had sent the details that I had to them.*
- *The Respondent withheld confirmation of the accuracy of the Published New Job Descriptions which they knew was incorrect and was for another Job Function, therefore denying me key information when I was seeking legal advice about my position.*
- *The cumulative effect of all of the above meant that I lost all trust in my employer and having taken legal advice based on the information and documents available to me, felt that I had not other choice but to resign."*

33 The Tribunal found as a fact that the only changes to the Claimant's role following the Dufry acquisition and the consultation process was the removal of the Claimant's ability to attend selection meetings and being assigned a global job title in addition to his local job title.

34 The Claimant's contract of employment at clause 2.2 provided for variation and development of the Claimant's duties, within his capabilities. He was told by his managers that his job role had not changed and that he was not at risk of redundancy. That was consistent with the position of the other 2 Supply Chain Managers.

- 35 As a matter of fact, apart from not attending product selection meetings, his duties remained the same. Attending product selection meetings was not part of his job description. It was “nice to have” and produced some benefits for the Claimant and the Respondent but, following the 2015 reorganisation, his attendance at such meetings was no longer required.
- 36 The Claimant’s contract of employment was not changed, he continued to have 6 staff reporting to him and his actual duties remained the same other than attending the meetings.
- 37 The Claimant’s position in the supply chain department hierarchy remained the same. There was no change to his salary, terms and conditions of service, location or supply chain duties and responsibilities.
- 38 He was told that the Dufry HR generated job descriptions were incorrect but he would not accept that. By October 2017 the correct job descriptions had been received although by this point the Claimant had left. In the correct new job description, although the wording was different, the basic accountabilities remained exactly the same.
- 39 There was nothing which amounted to a demotion in his role. The changes made regarding non-attendance at the product selection meetings and the addition of a global job title were well within the discretion afforded to the Respondent under clause 2.2 of the contract of employment.
- 40 The Claimant’s concerns dated 4 July 2016 were not recognised as a formal grievance nor did the Claimant label them as such. They were however taken into account and the Claimant had two meetings with his managers at which those concerns were discussed.
- 41 The changes were of a minor character, were reasonable and justifiable and the Respondent acted with reasonable and proper cause in implementing them. When the Claimant’s raised concerns about them his concerns were discussed and properly considered.
- 42 Viewed objectively, there was nothing in the conduct of the Respondent which amounted to a breach of trust and confidence entitling the Claimant to resign.
- 43 The Claimant confirmed in his closing statement that had he had the correct job description, he would not have resigned. In fact he was told that the previous job description was incorrect, but refused to wait until the correct job description was produced.
- 44 As there was no breach of contract to justify the resignation, it cannot amount to a constructive dismissal. The complaint of unfair constructive dismissal must therefore fail.

Employment Judge Vowles

Date: 12 September 2018

Sent to the parties on:

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For the Tribunals Office

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