

Constructive Dismissal Guidance

TRIBUNAL HIGHLIGHTS

Failed Constructive Dismissal Claim: martial arts champion unlikely to have feared violence in private meeting

Findlay v Vickers ET/2514837/09 | Dated: 25 January 2011

An employment tribunal has found that a business owner who told an employee a few "home truths" about her behaviour in a private meeting did not commit a fundamental breach of contract that entitled her to resign and claim constructive dismissal. The tribunal stressed that it will be an unusual case where an employer's reasonable conduct such as giving an employee a private, albeit blunt, warning about her conduct will be the "final straw" resulting in a constructive dismissal.

Ms Findlay, who was 20 when she resigned, worked as a beauty therapist at Mrs Vickers' salon. Ms Findlay had received one verbal warning for leaving the salon unattended when she went outside to have a cigarette. There was an ongoing dispute about how often Ms Findlay prepared the paper rolls needed for the couches in the salon. Mrs Vickers wanted them to be prepared in advance, while Ms Findlay always preferred to get them ready only when the rolls had almost run out. Ms Findlay had on occasions to be told about this issue, as well as the cleanliness of the room, her appearance and level of bookings that she made.

The tribunal concluded that, while Ms Findlay was not a model employee, she and Mrs Vickers generally enjoyed a good relationship. Evidence of this good relationship included the fact that the claimant was treated to a pedicure and eyelash tint and given extra money in advance of a holiday. However, the tribunal acknowledged that Mrs Vickers could be "pernickety" and "demanding" in terms of how she wanted things done.

On 4 September 2009, Ms Findlay made a request to leave work early the next day to celebrate her boyfriend's birthday. She also wanted to have her hair done by an apprentice at the salon. Mrs Vickers said that she could leave early, as long as she had completed her duties. However, a customer made an appointment on the Saturday afternoon that meant that Ms Findlay could not leave early after all. An argument ensued after Ms Findlay told Mrs Vickers to get the customer to rearrange the appointment and Mrs Vickers discovered that Ms Findlay had not completed her duties as promised, especially in relation to getting the paper rolls ready.

Mrs Vickers called Ms Findlay in to the staff room (where no one else was present) and expressed her concerns about the claimant's attitude. Mrs Vickers stressed that she was "the boss" and that Ms Findlay needed to improve on the cleanliness, appearance and bookings issues that had been raised in the past. The employment tribunal said that, while it was a one-sided meeting with the claimant doing or saying very little, there was no evidence that Mrs Vickers was particularly aggressive. Ms Findlay offered her notice, but went back to work after the meeting and worked the next day. The day after that, she brought in a resignation letter dated 4 September 2009.

The employment tribunal rejected the claimant's argument that the meeting on 4 September 2009 was the "last straw" in the employer's course of conduct that culminated in the fundamental breach of her contract of employment. The tribunal reviewed the case law on constructive dismissal cases involving a "last straw" and concluded that 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 his or her trust and confidence in the employer.

The tribunal found that there was no complaint and no independent evidence of inappropriate behaviour towards the claimant prior to September 2009. The resignation therefore hinged on the single incident on 4 September 2009. The tribunal accepted that Mrs Vickers probably did raise her voice and "express exasperation" with Ms Findlay in the meeting. However, the incident was not threatening or potentially violent. Mrs Vickers had simply made criticisms about the claimant, who had a "challenging and slightly stubborn attitude" and "could appear truculent".

The employment tribunal also felt that Ms Findlay had exaggerated in her evidence the seriousness of the argument, especially given that she stayed at work on the day of the incident and worked during her notice.

These were not the actions of an employee who had been put in fear of the threat of violence. In addition, the tribunal found it hard to imagine that the claimant, who was a 20-year-old martial arts champion, would have any concerns for her safety in a private meeting with the respondent, who was older and not as fit.

Helpful Hints

- Handling the perceived unsatisfactory behaviour of employees firmly, fairly and in accordance with laid down policy/procedures, is unlikely to result in constructive dismissal. Ensure that policies/procedures are communicated and understood by employees.
- It is important not to go over-the-top with criticisms as this could be experienced and interpreted as bullying or harassment by an employee leading to resignation and claim for constructive dismissal.
- Have clear, transparent and consistently applied policy and procedures for handling underperforming employees.

