



EMPLOYMENT TRIBUNALS

Claimant: Lisa Chamberlain

Respondent: Stowe Valley Multi Academy Trust

Heard at: Birmingham (video hearing)

On: 07 & 08 November 2024

Before: Employment Judge Paul Housego
Tribunal Member L Clark
Tribunal Member B Hicks

Representation

Claimant: In person

Respondent: Matthew Rudd, of Counsel

JUDGMENT

The Claims are dismissed.

REASONS

Summary

1. Ms Chamberlain is a highly respected former police officer who resigned her employment as a safeguarding lead with the Respondent. She says this was because of a combination of overwork and unhappiness at the way the safeguarding at the Respondent was being carried out, precipitated by one decision she felt was wrong. She claims this amounted to constructive dismissal, so that she should be paid for a notice period. She claims payment for the extra hours she worked. She also claims there was a failure to provide an orthopaedic chair as a reasonable adjustment for her bad back, which the Respondent accepts is a disability.
2. The Tribunal decided that Ms Chamberlain's concerns about overwork and about the way (at the time) the safeguarding function was being implemented were sound, but when she resigned it was over one specific issue which was

not a breach of contract by the Respondent and so she is not entitled to notice. There was no contractual right to be paid for the large amount of overtime she had worked, and so that claim could not succeed either. The Respondent was to assess her workstation the afternoon she resigned, and that was within a reasonable period of her request that this be done, so there was no failure to provide a reasonable adjustment.

Claims made and relevant law

3. The claims are of unfair dismissal¹, of disability discrimination (failure to make reasonable adjustments²), of unlawful deduction from wages³ (or alternatively breach of contract for non-payment for overtime), and for notice pay (which requires Ms Chamberlain to show that she was unfairly constructively dismissed).
4. Ms Chamberlain was not employed for two years and accepted that she could not bring a claim for unfair dismissal. There was reference to her concerns being public interest disclosures, but that was not linked to her resignation and so Ms Chamberlain did not fall within the S103A Employment Rights Act 1996 exception to that requirement.
5. Nevertheless, the Tribunal was required to find whether or not there was a constructive dismissal as if so, Ms Chamberlain is entitled to a payment in lieu of notice. That requires the Tribunal to assess whether there was a fundamental breach of contract by the Respondent, that Ms Chamberlain resigned because of it, in good time and without affirming the contract. The breach of contract in issue is the duty of mutual trust and confidence.
6. For the discrimination claim, it is for Ms Chamberlain to show reason why there might be discrimination⁴, and if she does so then it is for the Respondent to show there was not.
7. The claim of deduction from wages is under S13 Employment Rights Act 1996.

Issues

8. In summary, after finding the facts, is Ms Chamberlain entitled to payment for her overtime? Was Ms Chamberlain unfairly constructively dismissed and so entitled to notice pay? Did the Respondent breach its duty under the Equality Act 2010 to provide reasonable adjustments for Ms Chamberlain's disability of a bad back?

Evidence

9. There was a bundle of documents of 158 pages. Ms Chamberlain gave oral evidence. A witness statement from her husband was not challenged. For the Respondent, the Tribunal heard from Samantha Godfrey, Director of Safeguarding, from Gaynor Davy, Designated Safety Lead, and from Richard Howell, Health and Safety Officer for the Respondent.

¹ S 98 of the Employment Rights Act 1996

² S20 & 21 Equality Act 2010

³ S13 Employment Rights Act 1996

⁴ Igen v Wong [2005] ICR 931, Madarassy v Nomura International plc [2007] EWCA Civ 33, Laing v Manchester City Council [2006] I.C.R. 159, and Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913, all summarised in Royal Mail Group Ltd v Efofi [2021] UKSC 33

The hearing

10. The hearing was a video hearing. There were a few technical issues, which were resolved.
11. The Tribunal comments that all the witnesses clearly respected one another, and there is no doubt whatever that all of them were entirely truthful.

Submissions

12. Mr Rudd drew attention to the contractual documentation, submitting that there was no contractual right to paid overtime, so there could be no breach of contract in not paying the Claimant for it, nor any S13 claim for a deduction. He submitted that the resignation email and subsequent discussion did not refer to overtime so that was not a reason for resignation, which was out of the blue and expressly over one safeguarding decision which the Respondent was entitled to make. There was to be a formal workplace assessment the afternoon Ms Chamberlain resigned, and this was not long after she had first formally requested one, so this was not a failure to provide a reasonable adjustment. There was nothing to show any detriment arising from there being no desk assessment.
13. Ms Chamberlain said that it was simply not fair that she should be so overloaded with work, that there was no dispute as to amount of overtime she had had to work, and she ought to be paid for it. There were systemic problems over which she had resigned and failure in both regards was a breach of mutual trust and confidence. She had raised back problems at the initial interview, they knew she had brought in her own back support, she had raised it in conversation and formally, but nothing had been done before she left.

Facts found

14. Ms Chamberlain had left the police force because a back problem meant she could not pass the fitness test and so would only be able to undertake desk-based work. In the police she had been involved in child protection work, about which she cares deeply. She obtained a role with the Respondent as Deputy Designated Safeguarding Lead, supporting Gaynor Davy, the Designated Safeguarding Lead. She started on 15 May 2023.
15. Ms Davy had been intending to leave the Respondent partly because of the level of work involved in her role. The recruitment of a deputy was part of the reason she decided to stay. Before she changed her mind about leaving the Respondent, Ms Davy had organised an 8-week trip from September 2023. As part of persuading her to stay, the Respondent agreed that she could take this as period of leave or sabbatical.
16. Ms Chamberlain was clear in her interview that she left the police because of her back. The Respondent accepts that this is a disability and that they always knew that to be the case. At her interview Ms Chamberlain did not say that she needed any reasonable adjustments as a result.
17. Ms Chamberlain talked about things with other staff members, but at no time made a request for an orthopaedic chair prior to the request made in September 2023, referred to later in this judgment.

18. Ms Chamberlain also said that she is dyslexic. The Respondent accepts this too is a disability. Ms Chamberlain raises no claim in respect of that disability.
19. Ms Davy ensures that she clears her work every day. This is not a requirement but given that the work is about safeguarding children is plainly to be applauded. Ms Chamberlain emulated this excellent example.
20. There were, at the relevant times, operational problems within the system. The safeguarding team worked with a behavioural team which interacted with affected pupils. The feeling was that the safeguarding issues were not properly addressed by the behavioural team, so that problems were not resolved and that in turn increased workload. It also led to frustration as the safeguarding team felt that the effectiveness of their work was undermined by lack of implementation.
21. The other issue was that the head at the time was widely regarded as ineffective, and as he was ultimately responsible for making safeguarding decisions that caused difficulty when he made decisions that the safeguarding team did not recommend. After she left, Ms Chamberlain wrote to the governors and Ofsted about her concerns. It appears that she was not alone in expressing concern, and the head left the school mid-term, before the end of 2023. As Ms Chamberlain observed, this is far from usual, and usually indicates issues with the headship. Ms Godfrey was diplomatic, but her evidence confirmed this.
22. Ms Chamberlain exchanged text messages with Ms Godfrey about the workload. These are contemporaneous and clearly show that Ms Chamberlain was needing to work hours far in excess of her contract.
23. Ms Chamberlain's contract provides for a fixed salary. It does contain the possibility of paid overtime, but only if expressly authorised in advance. None of the overtime worked was authorised for payment.
24. In September 2023 Ms Chamberlain took a week's holiday, in term time, approved as she had booked it before getting the job. A week's pay was deducted. She objected, and in a text message, Ms Chamberlain wrote:

"I have worked 340hrs this month. I don't expect overtime but I expect to be paid my wage. I'm assuming it's the holiday but the last on[e] in June was honoured as hours worked. Which the[y] were. If I was in the police I would be paid the hours I've worked and at time and a half! [three laughing crying face emojis]"

The deduction was for that holiday and was made good. The fact is, though, that while she worked with the Respondent Ms Chamberlain did not regard the overtime as being paid overtime.

25. Ms Chamberlain was good at her job. During the Gaynor Davy's sabbatical, of 8 weeks, Ms Chamberlain acted up as Designated Safeguarding Lead, and her pay was increased for the duration of that role.
26. Ms Chamberlain was given some support, 3 days a week from 9-3. She expressed herself pleased with this, at the time, but it was not enough. The workload of the Designated Safeguarding Lead was so heavy that Ms Davy was going to leave unless she got support, which was the full time Ms Chamberlain,

who could only be that support by working a lot of overtime. It is obvious that Ms Chamberlain, acting up to a role with greater responsibility, would not be able to cope with the demands of Ms Davy's role without the support she, Ms Chamberlain, gave to Ms Davy. She coped with the role by working more and more to the point that it was not sustainable.

27. During that time Ms Godfrey stood in for Ms Chamberlain for the week's holiday in September 2023, which is referred to above. They exchanged text messages about the workload. In the informal way of texts, Ms Godfrey agreed entirely with Ms Chamberlain that her complaints about workload were entirely justified. She texted Ms Chamberlain during Ms Chamberlain's holiday:

"I can completely see why you have been putting in those hours and it is not sustainable I agree."

28. In a later text that week Ms Godfrey said that because of this she had called an urgent meeting with the head teacher and the CEO and the SLT (senior leadership team) to:

"sort out the fact that other issues are swamping safeguarding etc. You do an amazing job and it's the other issues around it blocking you".

29. Ms Godfrey did this, and substantial change was later effected. This appears to be part of the picture around the head leaving. For reasons of confidentiality Ms Chamberlain was not part of that process. The Tribunal does not criticise the need for confidentiality, and it is unfortunate that everything got too much for Ms Chamberlain and she resigned before the changes could be implemented. Ms Chamberlain set out in her witness statement the extent of her concerns about the school, and there is no reason to doubt anything that she says about it, as it was at that time.

30. Ms Chamberlain was unhappy about safeguarding decisions that were being made, and this increased her concerns.

31. Ms Davy returned to work on 06 November 2023, after 8 weeks' absence, and Ms Chamberlain's workload was then less, but still at a very high level.

32. The background to the departure of Ms Chamberlain is therefore that she had an extreme level of work, which conscience required her to complete (the work is keeping children safe) against the background of justified concern about the school's safeguarding being at that time, and viewed as a whole, dysfunctional, both in operational terms with pupils, and in decision making.

33. There was then a matter of a particular child, called Child A in this hearing. Ms Chamberlain had a definite view of the right outcome. The head decided otherwise. Ms Chamberlain feared that Child A might end up being stabbed. She left work immediately the decision was made, and emailed those involved, including Ms Godfrey and Ms Davy. She did this on 10 November 2023, the day of the decision:

"If that is decision, then you can take this email as my resignation with immediate effect. I do not want to work in a place that treats vulnerable people in this manner."

34. Ms Godfrey telephoned Ms Chamberlain the afternoon of 13 November 2023. It is correct that there was no request to Ms Chamberlain to reconsider, but the tenor of the conversation was that there was no possibility of that happening.
35. Returning to the claim of failure to provide a reasonable adjustment, on 04 September 2023 Ms Chamberlain emailed Sarah Fearn to say that she needed a desk assessment and asked to be pointed in the right direction. It is clear from this that there had been no formal request at this point. The same day Sarah Fearn directed Ms Chamberlain to Helen Way who could make the referral. Ms Chamberlain contacted Helen Way, and it was clear that it was Richard Howell who would deal with the request. Unfortunately, it was not made clear who would contact him. After a while, on 25 October 2023 Ms Chamberlain emailed Richard Howell saying that she had been told he was the person to deal with a desk assessment, and please could she have one? He was on holiday then, and emailed her on 02 November 2023 saying he was at Ms Chamberlain's school on Monday and Friday 06 and 10 November 2023 and would that work? Ms Chamberlain said either would be fine. Mr Howell replied to say Friday suited him better and arranged to undertake the assessment the afternoon of Friday 10 November 2023. He did not do this because Ms Chamberlain had left and resigned earlier that day.

Conclusions

36. First, payment for overtime. The difficulty for Ms Chamberlain is that she accepts that the contract requires management pre-authorisation for paid overtime, and that she did not seek, nor was given, such pre-authorisation. At the time she clearly understood that it was unpaid overtime. As there was no contractual right to paid overtime, it cannot be a breach of contract not to pay it, and nor can it be a deduction from wages. It was not deducted as there was no entitlement from which to deduct it.
37. As to notice pay, to show a constructive dismissal, the first thing to establish is the breach of contract. The background is an excessive workload. However, by the date of resignation, Ms Davy was back at work so Ms Chamberlain's workload was reduced (though still too high), and Ms Chamberlain had the support of Ms Godfrey in getting that changed, which support Ms Godfrey had expressed forthrightly and informed Ms Chamberlain that she was having high level meetings to resolve the problem. Ms Chamberlain did not refer to this in her resignation email, nor in the discussion with Ms Godfrey two days later. Put simply, this was not the reason she resigned.
38. Ms Chamberlain had reservations about the safeguarding decision making at the time, probably for good reason. Poor decision making is not a breach of mutual trust and confidence of itself. The resignation was over one issue Ms Chamberlain thought very important. She had been ground down over her period with the Respondent for both workload and organisational reasons. Those are not breaches of Ms Chamberlain's contract of employment (though the Tribunal does not minimise the effect of them on Ms Chamberlain's morale). This was a resignation over a point of principle, and to be applauded for that reason, but was not in response to a breach of contract. There are a variety of possible outcomes to any given safeguarding situation, and Ms Chamberlain's role was to handle the issue effectively and present everything to others for decision, making a recommendation. For the Respondent not to follow that recommendation is not a

breach of contract even if the decision was wrong (the Tribunal gives no opinion and makes no finding of fact as to this point).

39. Accordingly, overwork was not a reason for resigning and so cannot lead to a constructive dismissal and so to an entitlement to notice pay, and a difference of opinion about outcome is not a breach of Ms Chamberlain's employment contract and also cannot lead to a constructive dismissal. Therefore, the notice pay claim must fail.
40. Ms Chamberlain made no formal request for a desk assessment until September, and it was in hand when Ms Chamberlain resigned. While best practice might have been to ask Ms Chamberlain if she needed any reasonable adjustments by reason of her back problem (or dyslexia), not doing so is not a failure to provide a reasonable adjustment. Accordingly, this claim too must be dismissed.
41. The claim for unfair dismissal has never formally been dismissed. Ms Chamberlain thought this would happen after the Case Management Hearing, but it did not. Ms Chamberlain does not pursue that claim (having been employed for less than two years), and so it is dismissed on withdrawal by Ms Chamberlain. On the facts above about the notice pay claim it would not have succeeded in any event.
42. The Tribunal was deeply impressed by the three witnesses who work in safeguarding, Ms Chamberlain, Ms Davy and Ms Godfrey, and by the care, effort and commitment they all display in the hugely important child safeguarding work they do. Plainly they change young lives for the better.

**Employment Judge Housego
08 November 2024**