



EMPLOYMENT RIGHTS TRIBUNAL

ERT/2016/179

SHARONNE TAITT

CLAIMANT

v

**BARBADOS ASSOCIATION FOR CHILDREN WITH
INTELLECTUAL CHALLENGES**

RESPONDENT

DATE: 4th August 2021 and 10th August 2021^{4th} and 10th 2021

BEFORE: Before The Hon. Mr. Justice (ret'd) Chairman
Edward Bushell, Esq
Frederick Forde, Esq GCM

Christopher Blackman
Member
Member

APPEARANCES: Miss Lynette Eastmond, Attorney-at-law for the Claimant
Miss Hazelyn Devonish, Attorney-at-law for the Respondent

DECISION

1. Was it a resignation or was it a dismissal within the provisions of section 26 (1) (c) of the Employment Rights Act (the Act)? That is the issue for determination in this matter.

BACKGROUND.

2. The essential details of this case have been extracted from the Witness Statement of the Claimant and that of Dr. Jennifer Campbell, the President of the Respondent and made on behalf of the Respondent.
3. The Claimant was hired by the Respondent to be the Chief Executive Officer (CEO) at the Challenor Creative Arts and Training Centre (herein the Centre) and commenced work on September 1, 2009.
4. On June 26, 2015 the Respondent's Board of Management suspended the Claimant on full pay pending the outcome of a hearing to consider eleven charges relating to the use of the funds of the Respondent on diverse dates starting in January 2011 and ending in December 2014 allegedly for the Claimant's personal use and without the authority of the Respondent, and one charge relating to the use of funds of residents of the Centre when not authorized by the Respondent to do so, between July 2013 and June 2014.
5. On July 8, 2015 a meeting was held to discuss the said charges. The Claimant was present with her then Attorney-at-Law, Mr. Alvin Babb while the Respondent was represented by Dr. Jennifer Campbell, Mrs. Marina Leacock and Ms. Pamela Haynes, Committee Members. The Notes of the July 8 meeting have been exhibited to the Witness Statement of Dr. Campbell filed on behalf of the Respondent and show that several documents in support of the said charges were provided to Mr. Alvin Babb.

6. Consequent to the July 8th meeting there was an exchange of letters by the Claimant's attorney –at-law and representatives of the Respondent querying the charges, and the documentation in support of the said charges. A meeting was held on September 14, 2015 at the office of Miss Hazelyn Devonish, Attorney-at-Law, attended by the Claimant, her Attorney-at-Law Mr. Babb and Mrs. Lillian Lorde Rose a banking consultant and Dr. Campbell and Mrs. Leacock on behalf of the Respondent. Mr. Babb noted that the documents which had been submitted were incomplete and requested more information relating to the charges laid against his client. It was agreed that the requested documents would be provided by September 18, 2015 and the meeting would be adjourned to October 27, 2015.
7. On October 27, 2015 the meeting continued at the law office of Miss Devonish, attended by the Claimant, Mr. Stephen Alleyne attorney-at-law who was substituting for Mr. Alvin Babb who was on medical leave and Mrs. Lillian Lorde Rose. Dr. Campbell, Mrs. Leacock and Mr. Justice (retired) Leroy Inniss attended on behalf of the Respondent. There is no agreement as to what occurred at the October meeting. The Respondent contends that the Claimant offered her resignation with immediate effect from her position as Chief Executive Officer of the Centre; the Claimant asserts that she never resigned.
8. However, on November 16, 2015 Miss Devonish, wrote to Mr. Alvin Babb, stating in part: *"I refer to the disciplinary hearing in the captioned matter heard on Tuesday, 27th October 2015 at which meeting Ms. Taitt was represented by Mr. Stephen Alleyne acting on your behalf and Ms. Lillian Lorde. At the meeting Ms. Taitt offered her resignation with immediate effect*

from her position as Chief Executive Officer. This letter serves to confirm that the Board has accepted Ms. Taitt's resignation."

9. The letter of November 16, 2015 was followed by that dated December 4, 2015 from Mr. Stephen Alleyne attorney-at-law for the Claimant to Ms. Devonish in which she was advised that notwithstanding having made *"certain representations to the panel"* on October 27, 2015, for the reasons detailed in the letter, he was *"demanding that the status quo ante be restored and my client paid her salary for the month of November 2015 which, I am instructed she has not received"*.
10. On March 3, 2016 the law firm of Belgrave Eastmond Associates on behalf of the Claimant wrote to Ms. Devonish, indicating that it did not appear that there had been a reply to the letter of December 4, and further stating that ***"Our client is a damant that she has not resigned."***
11. On March 7, 2016 Ms. Devonish acknowledged the letter of March 3, 2016. After referring to Mr. Alleyne's letter of December 4, quoted above, noted that *"Not only did Ms. Taitt consult with her Attorney-at-Law but she also consulted with a friend whom she had brought to the meeting. It was after this consultation that Ms. Taitt tendered her resignation with immediate effect..... "*
12. The law firm of Belgrave Eastmond Associates on behalf of the Claimant wrote to Ms. Devonish on March 14, 2016 to advise that their client having not been paid for the months of November 2015 to February 2016, considered that her employment at an end, with immediate effect.
13. Ms. Taitt contacted the office of the Chief Labour Officer on March 9, 2016 alleging that she had been unfairly dismissed by the Respondent. There was

no agreement between the parties at conciliation, and consequently on April 14, 2016 the matter was referred to the Tribunal.

14. In the Claim Form dated June 8, 2016 the Claimant gave as the grounds of her claim that ***“she was constructively dismissed from her employment due to the non-payment of salary from October 30, 2015 to March 14, 2016 and seeks redress for back-pay, pay in lieu of notice under the contract, vacation pay, severance pay, reimbursement of deductions made from her salary without her knowledge and permission, and any further relief the Tribunal may deem appropriate.”***
15. The issue now for determination by the Tribunal is whether Ms. Taitt resigned her position as CEO of the Respondent, or whether the Respondent dismissed the Claimant, constructively or otherwise.

THE LAW

16. Section 26 (1) of the Act states that “For the purposes of this Part an employee is dismissed by his employer where
 - (a)....
 - (b)...
 - (c) the employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled to do so to terminate it by reason of the conduct of the employer.”

THE SUBMISSIONS

17. In June 2015, following allegations concerning the misuse of funds by the Claimant during the course of her employment as CEO of the Centre, the Claimant was suspended on full pay pending investigation of the allegations. The Claimant denied the allegations and thereafter there were a number of

hearings/meetings which while not resulting in any findings against the Claimant, led to an alleged resignation by the Claimant on October 27, 2015, which was accepted by the Respondent by letter dated November 16, 2015.

18. Miss Lynette Eastmond, Counsel for the Claimant has submitted that for a resignation to be effective it must be voluntary and it must have a clear effective date. Moreover, Counsel noted that the Layoff Certificate stated in response to the question "***Did the employee voluntarily leave your employment?*** Yes or No, the answer given was **No**. The Tribunal has been referred to the cases of ***Coenen v. South England Tyre Services Limited*** 6 ITR 41 and ***T. Robertson and G.N.D King v. Securicor Transport Ltd London [1972] IRLR 70***. In ***Robertson***, the Industrial Tribunal held that the applicants had been "dismissed" even if they had in form resigned, as they had been forced to choose between resignation and instant dismissal. Awards in favour of both men were made.
19. Miss Devonish for the Respondent however submitted that on October 27, 2015, the Claimant following a private consultation with her attorney-at-law, Mr. Stephen Alleyne and Mrs. Lorde, advised the meeting through her attorney-at-law that she would resign her position with immediate effect on condition that the police would not be called in as she was concerned about her reputation and the likely embarrassment to her son and that acceptance of the resignation had been communicated. The Respondent's Counsel moreover noted that by letter dated December 4, 2015 addressed to her, Mr. Stephen Alleyne attorney-at-law for the Claimant, advised that notwithstanding having made "***certain representations to the panel***" on October 27, 2015, for the reasons detailed in that letter, he was "***demanding that the status quo ante be restored and my client paid her salary for the***

month of November 2015 which, I am instructed she has not received". In support of the contention that the Claimant having given notice of her resignation on October 27, 2015 it could not be withdrawn unilaterally, Ms. Devonish cited the case of *Harris and Russell Ltd v. Slingsby* [1973] IRLR 221 in which the Presiding Judge of the National Industrial Relations Court, Sir Hugh Griffiths stated at page 223 "***the Court is satisfied that where one party to the contract gives a notice determining that contract he cannot thereafter unilaterally withdraw the notice. It will of course always be open to the other party to agree to his withdrawing the notice, but in the absence of agreement the notice must stand and the contract will be terminated upon the effluxion of the period of notice.***"

DISCUSSION

20. The Tribunal has taken note of the several letters which ensued between the parties or their representatives, following the 27th October meeting and referred to at paragraphs 8 to 12 herein.
21. The Tribunal finds it significant that the December 4 letter made no reference to that of November 16, 2015 from Miss Devonish, which stated unequivocally, that the Centre's Board had accepted Ms. Taitt's resignation. The Tribunal has also found it puzzling the references made to the *representations* to the panel in the December 4 letter. What **were** the representations made to the panel? To what status quo ante, was there to be a restoration?
22. It seems to the Tribunal that the letter of December 4, 2015 from Mr. Alleyne to Ms. Devonish is consistent with the understanding formed by the representatives of the Respondent that the Claimant resigned on October

27, 2015 and the request for the status quo ante to be restored, was an attempt to retract or withdraw the resignation given by the Claimant.

DISPOSITION

23. The letter dated November 16, 2015 recited at paragraph 8 above made it very clear that the Respondent treated the Claimant's resignation on October 27 as a settled matter. Moreover, there was no challenge to that assertion, when the Claimant's attorney at law on December 4, 2015 wrote to Counsel for the Respondent.
24. Counsel for the Respondent has drawn to our attention the observations by Wood J in *Kwik-Fit (GB) Limited v. Lineham* (1992) ICR 183 at page 191, letter E that ***"Where "special circumstances" arise it may be unreasonable for an employer to assume a resignation and to accept it forthwith. A reasonable period of time should be allowed to lapse...."*** and at page 192, letter B ***"One then asks what is that reasonable period of time? It may be very short.....it may be over a weekend....it is only likely to be a relatively short period, a day or two..."*** and have submitted that they are relevant in the instant case.
25. The Tribunal is of the view that as the burden of proof in cases of constructive dismissal rests on the employee, it is incumbent on the Claimant in this matter to establish what special circumstances there were that would have entitled her not to challenge her termination earlier than she did. The Tribunal finds that no material has been provided to support such a claim.
26. A review of the authorities makes it very clear that when an employee seeks to challenge his dismissal in the circumstances such as that of the Claimant

he is obliged to do so as quickly as possible. The three cases hereinafter cited are strongly supportive of this proposition.

27. In ***Western Excavating (ECC) Ltd v. Sharp*** [1978] 1 All ER 713 Lord Denning MR, a case of constructive dismissal, noted at page 717 that *"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, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, 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."*(emphasis added)
28. In the more recent case of ***Chindove v. William Morrison's Supermarket Plc*** UKEAT/0201/13/BA the Employment Tribunal held that a gap of 6 weeks between the alleged repudiatory conduct by the employer was a bar to a claim for constructive dismissal. That finding was reversed on appeal as it appeared that Mr. Chindove was off sick for that period. The Employment Appeal Tribunal in reviewing the facts in ***Chindove*** observed that the issue in that matter was essentially one of conduct and not of time....it all depended upon the context and not upon any strict time test.

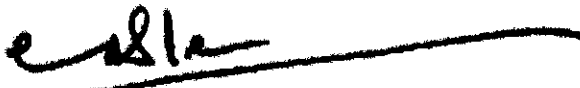
29. The Tribunal is of the view that when the entirety of the instant matter is considered, the time prescription in *Chindove* is relevant to the determination of the matter.
30. Finally, we refer to the English Court of Appeal decision in *Olufunso Adedeji v. University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23 dated 15 January 2021. In that matter Mr. Adedeji gave 3 months' notice of resignation on 25 May 2017 and so his employment ended on 25 August 2017. On 27 November 2017 he commenced proceedings against the Trust in the employment tribunal complaining of unfair (constructive) dismissal and race discrimination.
31. In its response the Trust took the point that the claim was out of time. At a preliminary hearing held on 24 July, 2018 the Employment Judge held that both the unfair dismissal and race discrimination claims had been presented three days outside the primary time limits and declined to grant any extension. The appeals to the Employment Appeal Tribunal as well to the Court of Appeal were unsuccessful.
32. Section 32 (2) of the Employment Rights Act provides that the Tribunal shall not consider a complaint of unfair dismissal unless the complaint is made to the Tribunal before the end of the period of 3 months beginning with the effective date of termination. The Respondent in this matter has not relied upon the foregoing statutory provision, and as the point was not addressed or argued before us, neither do we.
33. However, a consideration of the time lines in the instant matter when reviewed against the dicta in the foregoing cases as well as that in *Kwik-Fit*, underscores the dilatory behaviour by the Claimant with respect to the vindication of her position. There was a 4 month period from November 16,

2015 to March 14, 2016 before the Claimant took any action to assert her rights, notwithstanding the non- receipt of salary for the months of November, December, January and February. In the face of such inaction, she must be seen as affirming the "acceptance" of her resignation by the Respondent on November 16, 2015.

34. Accordingly, on a consideration of the evidence and the guidance provided by the authorities considered, we dismiss the Claimant's claim for unfair dismissal.

35. We make no order as to costs.

Dated this 17th day of November, 2021



Christopher Blackman
Chairman



Edward Bushell
Member



Frederick Forde
Member