

INDUSTRIAL TRIBUNAL

DECISION AND AWARD

Maite Mir v Fibreglass Europe Limited

Claim

The Complainant, Maite Mir, complains that she was unfairly dismissed by her employer, Fibreglass Europe Limited. The grounds on which the Complainant claims that the dismissal is unfair are set out in the originating application dated 6 March 2000.

The Respondent, Fibreglass Europe Limited gave notice of its intention to resist the claim and, in its Notice of Appearance, stated that the grounds on which it intended to resist the claim were "not made redundant".

Hearings

A preliminary hearing took place on 5 September 2000. The Complainant was represented by Mr J L Nuza and the Respondent was represented by Mr Stan Walker. Orders were made at that hearing that witness statements would be exchanged by no later than Tuesday 26 September 2000 and that the substantive hearing would take place from 24 October 2000. Due to circumstances beyond the control of either party the hearing had to be postponed twice and finally took place on Tuesday 27 and Wednesday 28 March 2001.

The Complainant was again represented by Mr Nuza and the Respondent was again represented by Mr Walker, assisted by Chantal.

There was no dispute that the Complainant was originally employed on 14 February 1995 by the Respondent's predecessor company, Colron Limited. On 30 June 1997 there was a transfer of undertaking from Colron Limited to the Respondent company, Fibreglass Europe Limited and, as a consequence, all Colron's employees (including the Complainant) had their employment transferred to Fibreglass Europe Limited, with no loss of accrued rights. The Complainant's salary at the time of the transfer of undertaking was £160 per week. At that time her position with the Respondent was specified as secretary.

On 31 March 1999 the Complainant's position was changed to that of Assistant Manager, an apparent promotion although the Complainant's salary was not increased until 1 August 1999, when it was increased by £10 per week to £170 per week. Certain pages of the Respondent's bundle, including the sheet entitled "Discrepancies of Wages - Please Take Note" and the sheets entitled "Maite's Wages" appear to indicate that the salary increase took place with effect from 14 February 1998 but I am satisfied that the date on the ETB form (Exhibit "MM4" to the Complainant's Statement) is the correct date of the increase.

Copies of the Employment and Training Board forms giving notice of the transfer of employment from Colron to the Respondent company, the terms of the Complainant's engagement by the Respondent company at the time of the transfer, the variation of the Complainant's job title to Assistant Manager and the increase to the Complainant's salary from 1 August 1999 were presented to the Tribunal as attachments to a Witness Statement signed by the Complainant and dated 14 September 2000, which was accompanied by a total of nine exhibits.

The Respondent submitted to the Tribunal an unsigned two page document entitled "Diary of Events", with a bundle of various copies attached.

The Complainant went on holiday during the Christmas and New Year period 1999/2000. She left work around mid-day on Friday 24 December 1999 and returned on Monday 10 January 2000. The Respondent did not dispute that the Complainant had given prior notice of her intended holiday. The Complainant's employment ceased on her return to work on Monday 10 January. Oral evidence was given by Mr Walker for the Respondent and by the Complainant as to the circumstances leading up to what took place on Monday 10 January 2000 and what actually happened on that day and thereafter. The versions of events given in the oral evidence by Mr Walker and the Complainant respectively differed somewhat but I am satisfied that the aspects of the matter on which the oral evidence differed do not affect my findings and decision below.

Certain pages of the Respondent's bundle, including the sheet entitled "Discrepancies of Wages – Please Take Note" and the sheets entitled "Maite's Wages" appear to indicate that the salary increase took place with effect from 14 February 1998 but I am satisfied that the date on the ETB form (Exhibit MM4" to the Complainant's Statement) is the correct date.

The Respondent has sought to establish that there was substantial reason for the dismissal of the Complainant. In his oral evidence Mr Walker stated that during the Complainant's absence on holiday matters had come to light in the Respondent's office which were of sufficient concern to Mr Walker as to justify the dismissal of the Complainant. Although the oral evidence given by Mr Walker, as well as the documents presented by him as an attachment to his "Diary of Events", were somewhat difficult to follow the core of Mr Walker's evidence was that during the Complainant's absence on holiday, it was discovered that two insurance cards, for two other employees of the Respondent, were missing (although social insurance and tax deductions had been duly made in respect of those two employees) and that an apparently large number of invoices in respect of work carried by the Respondent company for its principal customer, the Government of Gibraltar, had not been submitted to the relevant Government department in a timely fashion.

The Complainant, in her oral evidence, accepted that the handling of both these matters was under her responsibility. She accepted that the two insurance cards were missing because of a mere clerical error. She maintained that the invoices had been processed through the Respondent's computer system so that they were ready for presentation to the Government, as soon as the associated forms confirming the work comprised in the invoices had been signed as accepted by the persons for whom the work had been done (whom I understand to have been tenants in Government housing accommodation).

In his oral evidence, and in documents attached to his Diary of Events, Mr Walker sought to establish also that there were discrepancies in the wages paid to the Complainant and that, in fact, over a long period, the Complainant had arranged to overpay herself. Mr Walker accepted that these apparent discrepancies came to light after 10 January 2000 and were not amongst the reasons for the Complainant's dismissal on that date. In any event the evidence submitted by Mr Walker to support this contention was muddled and did not appear to be either accurate nor to fully establish Mr Walker's contentions. The matter of the apparent discrepancy in the Complainant's wages could not have been a reason for the dismissal, at the time the dismissal took place on 10 January 2000.

It is not in dispute that no warning (written or oral) was given by the Respondent to the Complainant before the dismissal took place. The termination of employment form dated 10 January 2000, signed by the Complainant and by Mr Walker on behalf of the Respondent, indicates in paragraph 12 that the reason for termination is "made redundant". I am satisfied that although the word "redundant" was used the Complainant's employment was terminated by her instant dismissal by the Respondent on 10 January 2000.

Decision

I am satisfied that the Complainant was dismissed by the Respondent on 10 January 2000. I therefore find that the Complainant was dismissed.

Section 65(1) of the Employment Ordinance provides that "*it shall be for the employer to show –*

- (a) *what was the reason (or, if there was more than one, the principle reason) for the dismissal; and*
- (b) *that it was a reason falling within the next following sub-section, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.*

The reasons set out in the "next following sub-section" which may be relevant to this case are those which may be–

- (a) *related to the capability or qualifications of the employee for performing work of the kind which was he was employed by the employer to do;*
- (b) *related to the conduct of the employee;*
- (c) *was that the employee was redundant..."*

The Respondent has not shown that there were good and substantial reasons of a kind such as to justify the dismissal of the Claimant. The Respondent is only entitled to rely upon reasons which were known to it at the time of the dismissal. It cannot rely upon other grounds or reasons which subsequently came to its knowledge.

I hold that the Claimant was not made redundant, in the proper sense of that word.

Section 65 (6) of the Employment Ordinance states that "*the determination of the question whether the dismissal was fair or unfair, having regard to the reasons shown by the employer, shall depend on whether in the circumstances he acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and that question shall be determined in accordance with equity and the substantial merits of the case.*"

The question whether or not the Respondent acted reasonably or unreasonably has to be answered with reference to the circumstances known to it at the moment of dismissal. The moment of dismissal is the time when the decision to dismiss was taken. If the Respondent's action was unreasonable at the moment of dismissal, subsequently discovered facts which were unknown to the Respondent at the moment of dismissal cannot make the dismissal reasonable. The Respondent did not give the Complainant any warning nor fully and fairly hear whatever the Complainant wished to say in her defence or an explanation in mitigation. Accordingly I hold that the Respondent failed to take proper procedural steps in this case. I hold that the Respondent acted unreasonably in dismissing the Complainant on 10 January 2000 and accordingly find that the grounds of the Complainant's complaint are well founded.

The Complainant stated in oral evidence that she found alternative employment on 24 January 2000 with Saccone & Speed as a receptionist, although her wages were £8,900 per year compared to her final wages, whilst employed by the Respondent, of £10,400 per year. The Complainant has further stated in her oral evidence that she joined the Gibraltar Finance Centre as a personal secretary on 27 March 2000, at a salary

higher than her final salary whilst she was employed by the Respondent, and is still employed there. In such circumstances it is clearly not practicable for the Complainant to be re-engaged by the Respondent and I hold that an award of compensation, to be paid by the Respondent to the Complainant, is appropriate.

Award

Section 72(1) of the Employment Ordinance provides that where the Tribunal has determined that compensation shall be awarded to a person who has presented a complaint, the Tribunal shall award a basic payment of the prescribed amount.

Section 72(2) of the Employment Ordinance provides that the Tribunal may award an amount in compensation of any loss suffered by the Complainant, without taking into account the amount of the basic award.

Accordingly I calculate the aggregate award as follows:-

1.	Basic award	£2,200.00
2.	Loss of wages incurred by the Complainant for the two weeks that she was unemployed following the dismissal on 10 January (£10,400 p.a. for 2 weeks)	£ 400.00
3.	Loss of wages during the 8 weeks in which the Complainant was employed by Saccone & Speed. The Complainant's wages at Saccone & Speed were £1,500 per year less than her final wages whilst employed by the Respondent	
	£1,500 ÷ by 52 x 8	£ 230.77
4.	In compensation for the Complainant's loss of statutory rights	<u>£ 100.00</u>
	TOTAL AWARD	£2,930.77


Nicholas Keeling
Chairman

4 April 2001