COLLAS CRILL

Tribunal rules that three-month delay in resignation "not unreasonable" in constructive dismissal claim

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A recent decision of the Guernsey Employment Tribunal has provided valuable guidance in relation to claims of unfair constructive dismissal and, in particular, the circumstances in which an employee can legitimately delay their resignation.

Constructive dismissal occurs when an employee resigns but is entitled to treat themselves as having been dismissed owing to the conduct of their employer.

Importantly, the resignation must be in response to that conduct and must be made without undue delay (otherwise the employee is said to have 'affirmed' the working relationship by continuing to work).

The stance of the Guernsey Employment Tribunal when considering a complaint of constructive dismissal has been that it expects an employee to be reactive and to respond to a breach without delay.

The tribunal decision of *Elizabeth Landles v Vazon Energy Limited Case No ED011/17* addressed an allegation of unfair constructive dismissal made by the complainant and ex-employee, Ms Landles. Ms Landles' complaint centred around the fact that following the death of the sole shareholder and director of her employer, Vazon Energy Limited, in December 2016, the company ceased paying her salary for 3 months before her eventual resignation.

Although she realised in January that she had not been paid, Ms Landles did not resign until the end of March 2017, and later lodged her complaint to the tribunal. Ms Landles stated that she had not resigned as soon as she realised she had not been paid as she had felt that it was inappropriate to do so owing to the untimely death of her colleague and her desire to show understanding and sympathy to his family and the employer at such a difficult time.

The tribunal found that, owing to the particular circumstances, the delay in Ms Landles handing in her resignation was not unreasonable.

It was this decision that ultimately led the tribunal to finding that Ms Landles had been constructively dismissed as a result of the non-payment of her salary, awarding her the equivalent of 6 months' salary - £119,000 - the second largest award ever made by the Employment Tribunal in Guernsey (the largest having been £242,307.30 in 2007).

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Key points

1. This decision illustrates how subjective findings of affirmation of contract are. Usually, an employee who continued to work for some 3 months after discovering a breach would be taken to have affirmed their contract. In light of this decision, employers should be aware of the potential for constructive dismissal claims some time after the event, if the particular circumstances permit it.

2. Although no mention of this was made in the concluding remarks of the tribunal, it may also have been significant that the complainant was signed off from work for four weeks during the period when she was not paid. Tribunals in the UK have allowed for delays in resignations when employees have been off work or unwell and employers should be alive to this fact.

3. The decision should not be taken as allowing employees to sit on their hands after a breach by their employer: special circumstances must exist. It should also be remembered that the employer was not legally represented at the hearing and did not itself attend through its directors – the 3-month delay may have come under more scrutiny if it had.

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