

Was an employee who resigned as a result of a restructuring exercise constructively unfairly dismissed?

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Argos Ltd v Kuldo Appeal No. UKEAT/0225/19/BA (2nd July 2020)

In a restructuring exercise the Respondent employer had sought to “map” the Claimant into a new role and did not treat her as redundant. The Claimant did not agree that her original role mapped to the new role and did not believe the new role was suitable for her. She considered it a role with lower status, fewer senior responsibilities, and a change of job content; she did not believe that it was 70% similar to her existing job. She resigned in protest, claiming constructive unfair dismissal, wrongful dismissal and a redundancy payment. The ET found that the new role was significantly different to the old role, and that the Respondent had breached the implied term of trust and confidence when it failed to consult, failed properly to assess the roles, and failed properly to address the Claimant’s grievance and appeal. The employer appealed. The EAT found that the ET was entitled to find that the Claimant was constructively dismissed. However, in finding that the dismissal was unfair, the ET had failed to direct itself that this was a separate issue, failed to address the issue of reason for dismissal and fairness, and/or failed to give proper reasons for its conclusion that the dismissal was unfair. There was, in fact, no disagreement between the parties that, if there was a dismissal, the reason was redundancy. The case would be remitted to the ET (to the same Employment Judge) to determine whether the dismissal on grounds of redundancy was unfair. The claims of wrongful dismissal and for a redundancy payment remained to be heard in the ET.

Comment: It is often assumed that a constructive dismissal is by definition unfair, which, as this appeal illustrates, is not correct. However, the case underscores the importance, in any restructuring exercise, of proper consultation and assessment of roles, and of course the proper handling of any employee grievances and appeals.

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