



EMPLOYMENT TRIBUNALS

Claimant: Mrs G McDermott

Respondent: Next Distribution Limited

Heard at: Leeds **On:** 13 March 2017

Before: Employment Judge Cox

Representation

Claimant: Mrs Datta, counsel

Respondent: Mr Blackwell, solicitor

REASONS

1. Mrs McDermott presented a claim to the Tribunal alleging that she had been unfairly dismissed by the Respondent (“the Company”).
2. Many of the background facts were not in dispute. The Company’s business is to distribute products to Next stores and on-line customers from its seven warehouses. In 2015 the Company conducted an organisational review of its administrative functions and decided that they needed to be centralised, streamlined and standardised in order to promote efficiency and avoid duplication of effort. This would result in a reduction in the number of administrative roles within the business. At the time of the review, each warehouse had a site secretary. As part of the reorganisation process, the Company decided to dispense with those roles and create two new roles of receptionist at the Elmsall Way and Elmsall Drive premises.
3. Mrs McDermott worked as a site secretary at the Company’s Stadium Way premises. She had worked for the Company since 15 October 2001. She was dismissed with notice and her employment ended on 24 June 2016.
4. Where an employee alleges unfair dismissal, it is for the employer to show that the reason for the dismissal was one of the potentially fair reasons for dismissal set out in Section 98(2) and 98(1)(b) of the Employment Rights Act 1996 (the ERA). These include redundancy (Section 98(2)(c)). An employee is dismissed by reason of redundancy if her dismissal is wholly or mainly attributable to the fact that the employer’s requirement for employees to carry out work of a particular kind have ceased or diminished or are expected to do so (Section 139(1) ERA). In this case, the parties agreed that the reason or principal reason for Mrs McDermott’s dismissal was redundancy, in that the Company’s requirement for

employees to carry out work of a particular kind, namely the job of site secretary, had ceased.

5. If it has been established that the reason for an employee's dismissal was redundancy, the Tribunal must then go on to decide whether, in all the circumstances of the case, the employer acted reasonably or unreasonably in treating that as a sufficient reason for dismissing the employee. That question must be decided in accordance with equity and the substantial merits of the case, and by reference in particular to the employer's size and administrative resources (Section 98(4) ERA). In this case, it was not disputed that the employer is a company of a substantial size and with substantial administrative resources, with a workforce running into thousands and an in-house human resources team.
6. When deciding whether an employer has acted reasonably in dismissing an employee, the Tribunal's role is not to decide whether it would have dismissed the employee had it been in the employer's shoes, or whether the procedure adopted was beyond all criticism. Rather, its role is to decide whether the employer's actions fell within the range of possible reasonable approaches that a reasonable employer might have adopted in the circumstances (Post Office v Foley [2000] IRLR 827). In the context of a dismissal for redundancy, the Tribunal will wish to be satisfied that the employer has given the employee a reasonable amount of warning about the possibility of redundancy and consulted with her about the impact it might have on her, adopted and applied a fair and objective basis for selecting who should be made redundant and explored the possibility of alternative employment before deciding to dismiss (Williams and others v Compair Maxam Ltd [1982] IRLR 83).
7. At the Hearing, the Tribunal clarified with the parties that the only complaint that Mrs McDermott had about the Company's approach to the redundancy exercise that resulted in her dismissal was that it had not offered her the new receptionist role at the Elmsall Way site. The Company had decided to give that role to Ms Theresa Conneely, site secretary at Elmsall Way, because it had concluded that she was effectively already carrying out the duties of the new post. The issue for the Tribunal was therefore whether this decision was within the range of possible reasonable approaches the Company could have adopted in the circumstances.
8. At the Hearing of the claim, the Tribunal heard oral evidence from Mrs McDermott herself. On behalf of the Company, the Tribunal heard oral evidence from Ms Pamela Lewsley, General Manager for the Stadium Way site where Mrs McDermott worked and the person who decided to confirm Mrs McDermott's dismissal for redundancy; and Mrs Dawn Ashton, Human Resources Manager for the Company's warehouse and distribution network, who attended several of the meetings with USDAW during the collective consultation process. On the basis of that evidence and the documents to which the witnesses referred it, the Tribunal made the following findings.
9. The Tribunal was referred to the job description for site secretary, which Mrs McDermott accepted in her evidence was a fair summary of the duties it involved. The job description gave the primary purpose of the role as follows:

“The post holder will provide confidential secretarial support to the Site Manager and be first point of contact for the site in terms of dealing with queries and information requests.”

10. The “key accountabilities” against which performance was measured included:

- Prioritise the administration requirements of the Site Manager and implement management instructions with regard to all aspects of the role . . .
- Meet with site manager daily to organise diaries ensuring appointments, emails and meetings are priorities and efficiently scheduled – ensure site manager is prompted of forthcoming events to ensure preparation work is completed . .
- Check and code all invoices in preparation for signature upon receipt – maintain and control departmental budgets in terms of recording expenditure of site . . .
- Ordering Managers uniforms and PPE [personal protective equipment]
- Coordinate and place stationary orders . . .

11. The job description of the new role of “receptionist” gave the primary purpose of the role as follows:

“The post holder will greet all internal and external visitors to the site, carry out invoicing for all NDL [Next Distribution Limited] Warehouse sites and ordering both stationary and uniform for all NDL Warehouse sites.”

12. The “key accountabilities” against which performance was to be measured were given as follows:

- “Reception duties and associated responsibilities, such as direct to desk orders
- Check and code all invoices for all Warehouse sites within NDL in preparation for signature upon receipt
- Ordering Managers uniforms and PPE
- Coordinate and place stationary orders.”

13. The Company recognises the trade union USDAW for the purposes of consultation on collective redundancies. The Company had agreed with the union that roles in the new structure would be offered to employees who had been identified for potential redundancy on the basis of length of service, with those with longer service being offered roles first.

14. All the site secretary posts were to be deleted. The site secretary with the longest length of service was unable to take up either of the receptionist roles as her childcare arrangements meant she could not travel to the Elmsall Way or Elmsall Drive premises. The Elmsall Drive receptionist post was offered to the site secretary with the next longest

length of service, Ms Danna Evans, who happened to already be based at Elmsall Drive.

15. Mrs McDermott had the next longest length of service amongst the site secretaries, and she was therefore expecting to be offered the Elmsall Way receptionist post.
16. During the collective consultation process, the Company accepted the Union's proposal that it should consider the work that individuals were actually doing, as opposed to what their job title was, when identifying who should be made redundant. If, on that basis, a role in the new structure replicated a role in the old structure, then the current postholder would remain in that role and effectively be excluded from the redundancy process. The Tribunal accepts that this was a reasonable approach for the Company to adopt. It was proposed by the recognised trade union and would be likely to be considered fair by the workforce, given that it was based on the premise that an individual should be allowed to keep the job she was already doing.
17. The Company and the Union agreed that the work that Ms Conneely was doing as site secretary at Elmsall Way was the same as the work involved in the new post of receptionist at Elmsall Way. They therefore agreed that she should be excluded from the redundancy process and just be slotted into the new role.
18. With the help of her local trade union representative, Mrs McDermott challenged the Company's position that Ms Conneely's work as site secretary was the same as the new role of receptionist. She said that in fact she and Ms Conneely did exactly the same work. The Company should therefore have applied the principle that new posts would be allocated on the basis of length of service and she should have been given the offer of the Elmsall Way receptionist post because of her longer service.
19. Ms Lewsley gave the matter further consideration. She looked at the tasks that site secretaries did at Elmsall Way, Stadium Way and Elmsall Drive. She remained of the opinion that a substantial proportion of the receptionist duties were already being done by Ms Conneely and that it was appropriate to confirm her in that post.
20. The Tribunal accepted that she had reasonable grounds for reaching that conclusion.
21. There clearly were differences between sites in relation to the work that site secretaries were doing, and the tasks they were doing in practice also differed from the job description for the post. (Indeed, one of the things that the Company hoped to achieve in the reorganisation was the reallocation of work that site secretaries had been doing but should not have been part of their role.) Ms Lewsley's evidence was that site secretaries had been emailed an activity log and told to complete it with the tasks they did over the course of a week, and had also been asked to supplement this with anything else they did that was exceptional over the following month or so. The Tribunal was not provided with copies of these emails and does not accept that the Company adopted the systematic approach to gathering data that Ms

Lewsley suggests. The only reference in the documentation to the recording of tasks by employees appears in a “questions and answers” sheet dated 18 November 2015 that was produced in the context of the organisational review that led to the redundancy proposals. Question 9 was: “How will my daily tasks be reviewed, can I assist with the process?” The answer was: “Yes – if you can log activities via a daily task sheet, this will help with the review process.” The Tribunal accepted Mrs McDermott’s evidence that she completed an activity log for only one day of the week and nobody chased her up to produce the others. The Tribunal concluded that the Company did not undertake a detailed analysis of the work that each site secretary was doing.

22. Nevertheless, the Tribunal accepted that Ms Lewsley had reasonable grounds for concluding that the work Ms Conneely was doing as a site secretary differed from the work that Mrs McDermott was doing. The Company’s senior management team and some of its support services are based at the Elmsall Way site. Other support services are based at the Elmsall Drive site. These two sites therefore have a much higher number of visitors than the other Company premises and they are the only ones with reception desks. Ms Conneely did her work at the reception desk at the Elmsall Way site.
23. From the job description for the new receptionist role it is apparent that it was to have a narrower focus than the site secretary role. It was to be concerned mainly with meeting and greeting visitors and processing invoices and ordering stationary and uniform for the whole Company. Because of the number of visitors to the Elmsall Way site and Ms Conneely’s location at the reception desk, the “meet and greet” aspect of the new receptionist’s role was already a significant part of Ms Conneely’s job. Further, as there was no site manager at Elmsall Way, Ms Conneely was not doing any of the site secretary’s role that involved administrative support to the site manager. In summary, the most significant change for her in moving from site secretary to the receptionist role would be that she would be responsible for 50% of the checking and coding of invoices for all the Company’s warehouses and ordering stationary and uniforms for the whole Company (the other 50% being handled by the receptionist at Elmsall Drive), rather than just processing invoices and orders for her own site.
24. Mrs McDermott was also involved in assisting visitors to the Stadium Way site, by going to the gatehouse and ensuring they found the person they were visiting. Because there were far fewer visitors to the Stadium Way site than the Elmsall Way site, however, it was reasonable for Ms Lewsley to conclude that the meeting and greeting of visitors was not a significant part of her role.
25. In all the circumstances, the Tribunal accepted that it reasonable for the Ms Lewsley to take the view that, in accordance with the approach agreed with the Union, the receptionist role at Elmsall Way should effectively be “ring-fenced” for Ms Conneely because she was already substantially performing the new role. That meant that Mrs McDermott, who had not expressed an interest in being considered for any of the other available roles, was dismissed by reason of redundancy.

26. For these reasons, Mrs McDermott's claim of unfair dismissal failed and was dismissed.

Employment Judge Cox

Date: 29 March 2017

Sent on: 3 April 2017