



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr P Wycherley

and

Respondent

Queen's Park Rangers Football
and Athletic Club Limited

Held at Reading on

27 and 28 June 2017

Representation

Claimant: In person

Respondent: Ms D Sengupta, counsel

Employment Judge

Mr SG Vowles (sitting alone)

RESERVED JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Unfair Dismissal - section 98 Employment Rights Act 1996

2. The Claimant was dismissed by reason of redundancy on 6 September 2016 and that was the effective date of termination. The dismissal was not unfair. This complaint fails and is dismissed.

Reasons

3. This judgment was reserved and written reasons are attached.

REASONS

SUBMISSIONS

- 1 Claimant On 5 December 2016 the Claimant presented a complaint of unfair dismissal to the Employment Tribunal.

- 2 Respondent On 6 January 2017 the Respondent presented a response. The claim was resisted.

EVIDENCE

- 3 The Tribunal heard evidence on oath from the Claimant Mr Paul Wycherley (Academy Football Operations Officer).
- 4 The Tribunal also heard evidence on oath on behalf of the Respondent from Mr Ruban Ghandinesen (Finance Director), Mr Christopher Ramsey (Technical Director), Mr Simon Ireland (Head of Coaching), Mr Lee Hoos (Chief Executive Officer - by video link) and Mr Alex Carroll (Head of Academy Business Operations).
- 5 The Tribunal also read documents in a bundle provided by the parties.
- 6 From the evidence heard and read the Tribunal made the following findings.

FINDINGS OF FACT

Background

- 7 The Respondent is a football and athletics club based at Loftus Road Stadium, London.
- 8 The Claimant was employed by the Respondent from 5 January 2012 until his dismissal on 6 September 2016, a period of 4 years. At the commencement of his employment he was employed as a coach in the Youth Academy.
- 9 In May 2015 the First Team was relegated from the Premier League to the Championship League resulting in a loss of revenue of approximately £44 million. During the following season the Respondent took a number of measures to reduce costs including the sale of several First Team players and a review of staffing across all departments.
- 10 In April 2015 the Respondent decided that the Claimant was not performing satisfactorily in his coaching role and proposed that he should be redeployed to a non-coaching role within the Youth Academy. The Claimant reluctantly agreed and entered into a new contract on 28 August 2015 as the Academy Football Operations Officer. His salary remained the same as previously. Although the new role was administrative, it was agreed that he could continue to undertake some coaching and he was permitted to travel to the Republic of Ireland to undertake his UEFA A Licence Coaching Course.

Reorganisation

- 11 In August 2016 Mr Ghandinesen (Finance Director) asked Alex Carroll (Head of Business Operations Academy) to review the staffing at the Academy to determine where costs savings could be made. Mr Carroll produced a document: "*Review of Academy Staffing Structure*" in August 2016. A new structure was proposed which included the removal of the roles of Academy Football Operations Officer and Head Academy Goalkeeper Coach. It also included the introduction of a third part time Academy Goalkeeper Coach. The document was circulated to all employees within the Academy.

Redundancy

- 12 On 5 August 2016 the Claimant attended a meeting with Mr Ghandinesen and Mr Carroll during which he was informed that, following the internal Academy review, his role was at risk of redundancy.
- 13 On 16 August 2016 the Claimant attended a formal consultation meeting with Mr Ghandinesen and Mr Carroll. The Claimant was accompanied by Mr Graham Mackrell (LMA representative). During the meeting Mr Mackrell suggested that the Claimant should be put in a pool with other employees performing roles that the Claimant felt he was qualified to do, and he identified 5 roles as follows:-

Alex Carroll, Head of Academy Business & Operations
Timothy Zobbo, Academy Liaison Officer
Edward Munnely, Lead Youth Development Phase Coach
Kwesi Casely-Hayford, Assistant Youth Development Phase Coach
Lee Hayes, Lead Foundation Phase Coach

- 14 The Respondent agreed to do so and a set of criteria was drafted for each of the roles as well as the Claimant's role. Each of the incumbents of the roles was then scored against the criteria by members of the Respondent's senior management. A copy of the scoring tables was contained in the Tribunal bundle of documents. The Claimant scored lower than each of the incumbents in the 5 roles.
- 15 On 30 August 2016 the Claimant, accompanied by Mr Mackrell, attended a further consultation meeting with Mr Ghandinesen and Mr Carroll. The Claimant was informed of the results of the scoring and that he had scored lower than the incumbents of each role. During the meeting Mr Mackrell suggested that two of the incumbents had less than 2 years' continuous service and that one of their contracts should be terminated and the Claimant

appointed in their place. Mr Ghandinesen considered the issue of length of service but concluded that it did not outweigh the other factors considered in the scoring process in relation to the Claimant's skills and performance.

- 16 The Claimant was provided with a job description for current vacancies at the Respondent and he was invited to apply for those positions, but he did not do so.
- 17 On 1 September 2016 Mr Ghandinesen wrote to the Claimant as follows:

"Dear Paul

Further to your meeting on Tuesday 30 August, this communication is to advise the Club has taken into consideration the points raised in relation to the time served by the present incumbents in the Youth Development Phase Coach and Academy Liaison Officer roles and are of the view that this will not affect the process.

The Club will be making a final decision on Tuesday 6 September 2016 in relation to the Academy Football Operations Officer being at risk of redundancy.

Should there be anything else you wish the Club to consider, prior to a decision being made, I would be grateful if you could inform me by email [ruban.ghandinesen @qpr.co.uk](mailto:ruban.ghandinesen@qpr.co.uk) no later than 5.00 p.m."

Dismissal

- 18 On 6 September 2016 Mr Ghandinesen wrote to the Claimant confirming his dismissal by reason of redundancy as follows:

"Dear Paul

Confirmation of Redundancy

Further to our meeting on 30 August 2016 when you were advised that the position of Academy Football Operations Officer had been identified as at risk of redundancy, due to the Club experiencing financial pressure and the need to make financial savings.

I regret to confirm that, because an alternative solution to the proposed redundancy has not been found the position of Academy Football Operations

Officer will be made redundant with effect from today's date (6 September 2016).

This means, your final day of employment with Queens Park Rangers will be today and you will receive 3 months' pay in lieu of notice."

Appeal

- 19 On 8 September 2016 the Claimant appealed against his dismissal.
- 20 On 21 September 2016 the Claimant, accompanied by Mr Mackrell, attended an appeal hearing chaired by Mr Hoos (Chief Executive Officer).
- 21 On 26 September 2016 Mr Hoos wrote to the Claimant with the outcome of the appeal. The decision to dismiss the Claimant was upheld. The letter included the following:

"I write further to our recent meeting in which you appealed the decision of Queens Park Rangers Football Club ("the Club") to make your position of employment redundant. You have appealed citing five grounds:

- 1. The selection pool was too small*
- 2. You were not offered other roles, only an opportunity to apply for other roles*
- 3. There are five roles you could have done*
- 4. Scoring chart against various other incumbents in existing roles was subjective and unclear*
- 5. You had more employment rights than other members of staff who were not made redundant. ...*

1. Pool Too Small

Turning now to the first ground raised by you: the pool was too small. Given that the change of role was due to your lack of qualities necessary to deliver the Club's requirements, then expanding the pool to include coaching positions is inappropriate. This would therefore leave the available pool as those positions which were administratively centred. I therefore find that the pool should have been administrative roles – effectively you and Alex Carroll.

2. Only Offered Opportunities to Apply

I find that the Club alerting you to other positions that were potentially available as vacancies was sufficient to meet its duty of care. Whether you were the best candidate to perform these roles is an entirely different matter and as explained in my determination of the Preliminary Issue, it was deemed that coaching positions were inappropriate.

3. 5 Other Roles That Could have been Done

Out of the roles that you mention, most of them are coaching roles which I have already commented on above. It would appear the pool was in fact expanded by analysis when the scoring chart was introduced to compare candidates. I also note that the skill sets and knowledge of the League personnel involved in Alex Carroll's role are substantially more than the position of Academy Football Operations Officer. In fact the position of Academy Football Operations Officer contains only a small proportion of the duties required for the Head of Academy Business & Operations role. Therefore, this part of the Redundancy process is upheld.

4. Scoring Chart

The scoring chart was introduced as a way of comparing potential candidates against each other on a performance basis. In key areas you scored lower or substantially lower than existing candidates. I find no evidence that you were consulted on this and believe that best practice would have been to consult with you. However as regards subjectivity, I find there was no more or no less than in any performance appraisal. Moreover the only relevant score as regards this process would have been against Alex Carroll, and that position would have involved more enhanced knowledge than you currently have in order to fulfil the duties of the role of Head of Academy Business & Operations.

5. More Employment Rights

Length of service may be one of the factors used in establishing the criteria for redundancy. However, I do not believe that it is the only dispositive criteria or that because one person has more length of service than someone else, they automatically qualify for the position and someone with less service must automatically be made redundant.

I therefore uphold the process used by the Club during the redundancy consultation. I shall ask our payroll department to process your

redundancy pay and all notice pay so that you will receive this in a lump sum payment. If this is not to your satisfaction, please let me know asap and we will pay you under the terms of your notice provision on a monthly basis.”

Tribunal Claim

22 On 5 December 2016 the Claimant presented his claim to the employment tribunal.

RELEVANT LAW

Unfair Dismissal – Employment Rights Act 1996

23 *Section 94. The right.*

(1) An employee has the right not to be unfairly dismissed by his employer.

24 *Section 98. General.*

(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or if more than one the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it- ...

(c) is that the employee was redundant ...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

25 Section 139. Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) ...

(b) The fact that the requirements of the business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

Case Law

26 In Williams & Others v Compare Maxam Ltd [1982] ICR 156, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. They were as follows:-

- Whether the selection criteria were objectively chosen and fairly applied;
- Whether employees were warned and consulted about the redundancy;
- Whether if there was a Union, the Union's view was sought; and
- Whether any alternative work was available.

27 In Polkey v AE Dayton Services Ltd [1988] ICR 142, the House of Lords said that an employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment with his own organisation.

28 In Capita Hartshead v Byard [2012] UKEAT/0445/11 redundancy cases were reviewed and applicable principles were set out where the issue in an unfair

dismissal claim is whether an employee has selected a correct pool of candidates who are candidates for redundancy:

- (a) It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted (per Browne-Wilkinson J in Williams v Compare Maxam Ltd [1982] IRLR 83, 18;
 - (b) The courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn (per Judge Reid QC in Hendy Banks City Print Ltd v Fairbrother and Others (UKEAT/0691/04/TM);
 - (c) There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem (per Mummery J in Taymech v Ryan [1994] EAT/663/94;
 - (d) The Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has 'genuinely applied' his mind to the issue of who should be in the pool for consideration for redundancy; and that
 - (e) [Even] if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.
- 29 Wrexham Golf Co Ltd v Ingham (UKEAT/0190/12/RN) - there will be cases where it is reasonable to focus upon a single employee without developing a pool or even considering the development of a pool.
- 30 Ultimately, the fairness of a decision to dismiss for redundancy must be assessed against the range of reasonable responses.

DECISION

Redundancy Situation

- 31 I find that there was a genuine redundancy situation in August/September 2016 and that redundancy was the reason for the Claimant's dismissal. There

was no evidence, nor any suggestion, that there was any other reason for the dismissal. The redundancy situation was not challenged.

Fairness

- 32 At the tribunal hearing, the Claimant submitted that his dismissal was unfair for the following reasons:
- 18.1 The pool for redundancy was too small;
 - 18.2 The redundancy selection process was unfair;
 - 18.3 The other 5 employees considered and scored were not consulted in the same process as the Claimant;
 - 18.4 The scoring process was not conducted accurately, evidenced, consulted and performed fairly;
 - 18.5 All possibilities to mitigate the effects of redundancy were not considered including the Claimant's offered solutions;
 - 18.6 The Claimant was bullied and unfairly coerced into changing roles in August 2015; this then made the subsequent redundancy selection unfair when not considered for other suitable roles. There was no evidence to justify this change of role.
- 33 Although initially in a pool of one, the pool was effectively expanded to include 5 other roles which were suggested by the Claimant and his representative during the consultation process. Their roles were scored alongside the Claimant. The other 5 employees were not subject to the same consultation process as the Claimant, but they and their roles were considered alongside a set of reasonably objective criteria set and scored by senior managers. The Claimant was fairly considered alongside the other employees as part of a pool. Any scoring exercise is bound to involve a degree of subjectivity, but there was no reliable evidence of inaccuracy or undue subjectivity. It had sufficient objectivity and transparency to be fair.
- 34 I was satisfied that there was a sufficiently meaningful warning and consultation with the Claimant regarding his position in consequence of the redundancy situation. His suggestions were genuinely considered and reflected in the outcome letters.
- 35 I was also satisfied that the Respondent gave due consideration to the possibility of alternative employment. The roles immediately available within

the Respondent's organisation were notified to the Claimant although he decided not to apply for any of them.

- 36 Mr Hoos' detailed appeal outcome letter (quoted extensively above) in particular sets out and addresses the Claimant's concerns regarding the selection process and the reasons for the decision to dismiss.
- 37 The change of role in August 2015 was not relevant to the selection process or the Claimant's dismissal. The Claimant had been working in the new role for over a year by the time of his dismissal and although he clearly continued to harbour resentment at having been moved from the coaching role, he had agreed to change roles and signed a new contract of employment to that effect in August 2015.
- 38 It is not the function of the Tribunal to determine whether it might have been fairer for the Respondent to have acted in a different way. The question is whether the Claimant's dismissal lay within a range of conduct which a reasonable employer could have adopted.
- 39 I found that the dismissal was by reason of redundancy and that the process adopted by the Respondent was fair. It was within the range of reasonable responses.
- 40 The complaint of unfair dismissal was not well founded.

.....
Employment Judge Vowles

9 August 2017

Sent to the parties on

.....31/08/17.....

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for the Tribunal Office