



EMPLOYMENT TRIBUNALS

Claimant: Mr J Bayram

Respondent: Abellio East Anglia Ltd

HEARD AT: NORWICH ET **ON:** 16th – 18th August 2017

BEFORE: Employment Judge Postle

REPRESENTATION

For the Claimant: In Person

For the Respondent: Mr Dobson, Counsel.

JUDGMENT

1. The claimant was not unfairly dismissed.
2. The respondents were not in breach of contract.

REASONS

1. The claimant brings a claim for unfair dismissal and breach of contract. The claimant's specific allegations were set out at a Preliminary Hearing on the 19th January 2017 and they are at pages 23 to 24 of the bundle. Further elaboration in respect of his claim is set out in his witness statement summarising the reasons why he believes he has been unfairly dismissed.
2. The respondents resists all claims and rely on the potentially fair reason to dismiss of, some other substantial reason, that being the claimant accepted a suitable alternative role with pay protected though frozen while he himself requested UBA status (used to best advantage). This

was after the claimant having been placed in a permanent role at Ipswich as a Revenue Protection Officer following the closure of the Norwich Depot from that role. Thus at that stage there was a potential redundancy in September 2015 although that was to be avoided by the alternative role being offered and accepted by the claimant in the same position at Ipswich.

3. In this Tribunal we heard evidence on behalf of the respondent from Mr Davies, Miss Churchill and Miss Owen. All giving their evidence through prepared witness statement. The claimant gave evidence also through a prepared witness statement, and the Tribunal also have the benefit of a bundle of documents, totalling 989 pages.
4. The facts of this case show that the claimant was originally employed in the capacity of Revenue Protection Officer with the respondents originally based at Norwich, and had been with the respondents or their predecessors from the 2nd December 2002 until his dismissal on the 18th November 2016. The claimant was originally based at the Norwich Depot and following a ticket survey which was undertaken on an annual basis, and after consultations with the Trade Unions the respondent's took the decision to close the Norwich depot. There was to be no redundancies of the six Revenue Protection Officers based at the Norwich depot following agreement with the Trade Unions.
5. The decision to close the depot at Norwich was made following consultation meeting on the 26th June 2015 attended by management and the Trade Unions. Kim Bucknall confirmed the Norwich depot would close around the 31st August, it was agreed that the move from Norwich would be to Ipswich rather than Colchester as originally planned. In the end the closure date was pushed back to the 20th September pending further discussions with the Trade Unions over travel time and allowances. Discussions over time had been ongoing and continued ongoing and it is fair to say the biggest impact of the move would be on the claimant who lived at Lowestoft. The move to Ipswich was borderline in respect of additional travel time, such matters appear to be covered in the promotion, transfer, redundancy and re-settlement arrangements known as the PT&R and that's at page 859.
6. The claimant would not actually be displaced until he was formally notified by letter of the 2nd September at page 74 following a 1to1 with each employee affected by the closure including the claimant. That letter gave the claimant two options; transfer to Ipswich as a Revenue Protection Officer or go UBA (used to the best advantage), which is clearly a short term facility while an individual finds themselves alternative positions within the company. List of vacancies are then circulated on a regular basis to affected employees. The letter confirmed the claimant's role would no longer exist from the 20th September 2015 when the Norwich Depot was to close. The letter confirmed the PT&R conditions applied to that role. The claimant was required to indicate his option by the 11th September during which those

affected had been represented and assisted by an accredited Trade Union representative who would no doubt be familiar with the PT&R Rules and Regulations. The claimant in his 1to1 meeting with Kim Bucknall on the 3rd September was accompanied by the Trade Union Representative Mr Williams. Confirmation of what was discussed at that meeting was confirmed in a letter of the 3rd September to the claimant at page 76, Miss Bucknall enclosed extracts detailing allowances and also explained UBA alternative work. Further that UBA would be something on short term basis only and that usually if 3 suitable vacancies were made available and declined then an individual could or would be at risk of making themselves redundant. Clearly a UBA position cannot remain open ended. Travelling time had still not yet been agreed and further meetings were arranged to try and resolve this issue.

7. To repeat there were no redundancies as a result of the closure of the Norwich Depot, the claimant had indicated his choice that he wished to transfer to Ipswich as a Revenue Protection Office which was doing the same role as he'd previously done at Norwich. The claimant was therefore displaced though had secured a permanent role. The claimant's confirmation as to his preferred option (taking Ipswich position) was provided by him ticking his choice to go to Ipswich around the 10th September and that's at page 75. The position was confirmed to the claimant by letter of 23rd September and that is at page 98. That letter sets out Human Resource's understanding of the allowances for travel and additional travelling time and as travelling time amounts had not been agreed individual travelling timesheets had to be completed on a daily basis.
8. There then followed a number of meetings involving the claimant and his Trade Union representative with management and HR as to the entitlements the claimant was allowed under the PT&R. The claimant had made it clear during this period around September – November he did not wish to move as his son was taking his GCSEs therefore the question of any removal allowance was clearly not relevant at this stage unless at some stage in the future the claimant indicated his wish to move.
9. The culmination of various meetings came on the 20th October, an email from Miss Churchill (Human Resources) to the claimant and his Trade Union representative Mr Williams following further questions raised by the claimant as to his PT&R entitlements. The claimant was informed at page 126 about mobility payments that the respondents didn't pay for moving house or help with mortgage and just the mobility payment on loan arrangements for staff displaced, trial period of 28 days and what would happen if he decided no to accept it and in summary his options were as follows; to remain at Ipswich and receive the mobility payment and travel allowances or to go UBA and find an alternative job nearer home and receive no payments. Until the claimant made it clear what he wanted his mobility allowance was being withheld for obvious

reasons particularly if he did not want to stay at Ipswich as then no mobility allowance would be payable. In the meantime the claimant was able to claim his daily travel allowance. As the claimant had still not made his position clear by November there was a further meeting on the 19th November at which further questions were raised, answered and the claimant was asked in no uncertain terms again to make a decision, did he want to stay at Ipswich or did he wish to return to Norwich as a UBA and it was agreed the claimant would advise his options by the 27th November. The claimant did not notify management of his preferred option but nevertheless remained working in Ipswich.

10. In December there were some issues around the claimant's conduct at work, on occasions management has requested the claimant to finish his shift early without loss of pay so he could catch an earlier train, something which the Trade Union had requested of the respondents. The claimant refused insisting that he wished to end his shift thereby wishing to catch a later train simply to maximise the amounts of waiting time that he could claim under the PT&R entitlement. Clearly that was not in the spirit of the regulations or what had been agreed with the Trade Union and management.
11. On the 3rd December the claimant raised a grievance about the various issues of what he believed he was entitled to under the PT&R allowances particularly he complained that by being asked to finish work early meant he was losing money and would not be able to maximise his claim for waiting time. In view of this and the claimant's grievance Miss Bucknall took the decision on the 9th December that the claimant should remain at home on full basic pay until the 2nd January when a period of annual leave was due to end.
12. The grievance ultimately was considered by independent managers at three different stage under the company procedure. The final stage was heard by Miss Gibbs, Head of Service Quality and Standards on the 5th February the grievances were not upheld. The claimant was then signed off work in February for a period of time. The claimant then raised a further grievance around the end of February raising similar issues as the previous grievance had touched upon, particularly his allowances and entitlements. The management believed that the grievance had already been addressed and was simply going round in circles.
13. On the 13th March the claimant confirms in writing that he wished to go UBA (page 244) therefore he is no longer a displaced employee. It was the claimant's intention to go down this route with all the risks that that would encounter. The claimant now had to find an alternative position within a reasonable period of time. The claimant was not forced to take the UBA role, the important fact here is an employee who is not a displaced employee who goes UBA cannot have the protection and benefit of the PT&R Regulations.

14. A weekly or a vacancy list is circulated to the claimant and other relevant employees. Miss Churchill continued to keep the claimant informed about a ticket office role which the claimant had shown an interest in at the time. However, there were no vacancies in that role at that time. The claimant it is true had enquired about a Ticket Office role in Lowestoft, however Miss Churchill had advised that the role had already been filled and assessments concluded (at page 94). The vacancy had been filled by a female who had previously been displaced, clearly there would be no justification for removing that particular employee and placing the claimant in that role. The vacancy had in any event been advertised in July 2015 and at that time the claimant had not been a displaced employee.
15. In the meantime the respondents continued looking for potential jobs for the claimant whilst he was on UBA. This is confirmed by the fact that Miss Owen (Human Resources) informed the claimant of a suitable vacancy in Train Preservation in an email to the claimant of the 17th May (at page 279). The claimant did begin a trial in Train Preservation, but that had to be aborted because the claimant had a medical problem (at page 289). In the intervening period Miss Churchill found some work delivering uniforms (at page 299) clearly the claimant could not remain on his Revenue Protection Officers salary doing very little in terms of meaningful or productive work, that clearly is not the intention of somebody being on UBA. The claimant then applied for a Materials Assistant role (at page 300). The claimant was guaranteed an interview and it appears he was unsuccessful. The only other role the claimant had applied for was a Trainee Depot Drivers role upon which there was a long waiting list as this was a coveted position within the railways.
16. We now have a situation where it is approximately 9 months since the Norwich Depot had closed, and three months since the claimant had gone into the UBA status. I repeat the UBA status is intended as a short term measure. Miss Churchill therefore wrote to the claimant on the 7th June informing the claimant he may be placed on notice (at page 305). There was then a meeting on 14th June with the claimant to discuss his UBA status at which Miss Churchill informed the claimant that she was putting him on 12 weeks notice (at page 317). The claimant was then given another opportunity in the Train Preservation role and his trial period was extended by 4 weeks (at page 342). That proved successful for the claimant. There was then further exchanges about pay and terms, and Miss Churchill explaining that the claimant's existing RPO pay rate would remain but the rate of pay would be frozen until persons in the position of cleaners effectively caught up in salary as they were on a lower rate of pay.
17. Around the 1st September the claimant was informed by Miss Churchill that he was being appointed permanently to the role of cleaner. The claimant was notified of this in a letter of the 1st September (at page 401) in which the contract of employment was enclosed to sign. It was a fairly standard contract of employment, the normal terms one would expect an

employer and employee to agree. However, the claimant refused to sign the contract on the grounds that there was a clause contained in the contract about confidentiality which he was unhappy about and for some reason believed it prevented his rights for whistle blowing. The notice which had been given in June had been extended and was now to expire around the 18th November. During the notice period the claimant could have applied for alternative positions, but seemingly did not. The claimant worked out his notice having taken up the suitable alternative role but chose not to accept the contract and terms and simply refused to sign it. As a result of that his notice due to expire on the 18th November was to take effect.

The Law

18. The first point I wish to make, it is not for me or the Tribunal to determine or give judgment on whether it was correct or an appropriate business decision for the respondent's to take the decision to close the Norwich Depot, and in any event regardless of what the claimant or the Trade Union felt the management concluded that it was a sound and reasonable business decision that Revenue Protection was best carried out from originally Colchester and then Ipswich. I am not here to interfere with that decision.
19. Section 98(2) of the Employment Rights Act 1996 confirms that potentially fair reason to dismissal an employee is for some other substantial reason, and that of course is the reason that is advanced by the Respondents. Once an employer has established a reason for dismissal, in this case we know some other substantial reason the question of whether the decision to dismiss was reasonable is then considered under Section 98(4) of the Employment Rights Act 1996. The Tribunal I remind myself must not substitute it's own view, rather I must ask myself whether the decision to dismiss for some other substantial reason fell within the range of a reasonable response that a reasonable employer might adopt.

Conclusion

20. It is clear that the Norwich Depot for Revenue Protection Offices was to close. 6 Revenue Protection Officers were affected. All were given options, they could either transfer to Ipswich or go UBA (used to the best advantage). There was an agreement with the Trade Unions that there would be no redundancies. Displaced employees, all 6 transferred to Ipswich they were clearly not redundant. They were to be covered by the PT&R Rules and Regulations which govern various employees entitlements in certain circumstances particularly were they are considered a "displaced" employee.
21. There was a disagreement/misunderstanding between the claimant and the management and HR over the entitlements to which he was entitled to when he transferred to Ipswich, particularly travelling time and the

payments to be made. The claimant did receive travel time and free travel to and from his home. It is clear that the claimant did not want to relocate his family to the Ipswich area, he had said so. Therefore any rights or entitlements under PT&R regarding removal are irrelevant at that stage. It is clear that there were many meetings between the claimant, his Trade Union Representative, management and HR to resolve matters.

22. The claimant was given a second chance to restate his options in November and given a period of time in which to state, do you want to stay at Ipswich or do you want to go UBA. He failed to respond but nevertheless continued in the Ipswich role as a Revenue Protection Officer. In March of his volition the claimant asked to go UBA. It is clear that role is limited, it is short term and given the fact that the claimant at that stage had been formally a displaced employee who had now been given a permanent role at Ipswich but then of his own volition goes UBA it is difficult to see how then the PT&R entitlements would be relevant to such a situation as then the claimant is no longer considered a displaced employee.
23. The claimant ultimately accepted a cleaner's role, his RPO pay was red circled in other words kept at the same level although frozen until other cleaners pay caught up given the fact that they were on a lower salary. He was given two trial periods during which notice had been originally served in June for 3 months and then extended. The claimant was successful in the trial period, accepted the position and seemed happy enough to work in that role albeit one accepts that it might not have been ideal. Then when the contract is sent to him in September the claimant does not sign the contract because of a confidentiality clause. The respondent has I am satisfied assisted the claimant throughout. The claimant had given up a permanent role at Ipswich after being displaced, chose to go UBA, the respondents provided vacancy lists, assisted with IT training and ensured interviews for a Materials Assistant role, found him a cleaners job, gave him two trial periods, extended his notice and then the claimant for reasons best known to himself (although he advances the reason of the confidentiality clause) refuses to sign the contract after notice had been given and indeed extended. It is difficult see where the respondents could go to here other than at that stage to invoke the notice of termination which had been given in June and been extended. In those circumstances I am satisfied that the dismissal is fair.
24. I am also satisfied for the avoidance of doubt given the facts of this case there are no procedural flaws leading to the claimant's dismissal. The respondent had heard the claimant's grievance through the three stages, it was not upheld. The claimant was not entitled to issue a second grievance which repeats or surrounds the same issues as the previous grievance. The claimant was not made redundant and therefore not entitled to a redundancy payment. The claimant was given notice as a UBA after 3 months where at that stage no alternative vacancy existed during that period. A new position ultimately was found and accepted,

notice having been given and further extended the claimant worked in that new position and then when the contract was sent to him refused to sign it for reasons best known. Therefore notice took affect in November at which stage the claimant was clearly not redundant.

25. So far as it is advanced in this case that the claimant was constructively dismissed I cannot say or see on the facts that there is any fundamental breach by the respondent which would entitle the claimant to resign in any event. As regards bumping which the claimant has advanced, clearly this is not appropriate the vacancy that he refers to was July 2015. The claimant was not displaced until September 2015 and someone was already offered that position and completed the assessments. Bumping has its place in the work place but in the facts of this case it would have clearly been inappropriate. In all the circumstances therefore the claimant's claims are not well founded.

Employment Judge Postle, Norwich.

18 September 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS