THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE HALL-SMITH**

BETWEEN:

Miss N Dinham **Claimant**

AND

William Hill Organisation **Respondent**

ON: **6 November 2017**

APPEARANCES:

For the Claimant: **Mr J Hirschman, FRU**

For the Respondent: **Ms S Berry, Counsel**

RESERVED JUDGMENT

THE JUDGMENT OF THE TRIBUNAL is that:

1. The Claimant was unfairly dismissed by the Respondent.

2. A Remedy Hearing will be listed.

REASONS

1. By a claim form received by the Tribunal on 11 July 2017 the Claimant, Miss Nicola Dinham brought a complaint of unfair dismissal against the Respondent, William Hill Organisation.

2. At the hearing the Claimant was represented by Mr J Hirschmann, Fru representative who called the Claimant to give evidence before the Tribunal.

The Respondent was represented by Ms S Berry, Counsel who called the following witnesses on behalf of the Respondent namely Ms Liz Fancy, Head of Human Resources for the Respondent's South Division and Ms Tara Collins, Area Manager. There was a bundle of documents before the Tribunal and a bundle of authorities produced by Mr Hirschmann on behalf of the Claimant.

The Issue

3. The issue to be determined by the Tribunal was whether the Claimant's dismissal for some other substantial reasonable reason had been fair or reasonable within the meaning of Section 98(4) of the Employment Rights Act 1996. It was the Respondent's contention that there had been a genuine business reorganisation, which had included a reorganisation of job roles and that the Claimant had been dismissed for failing to agree to new contractual terms involved in the job role the Respondent proposed she should undertake.

4. The Claimant contended that there had not been a genuine business reorganisation, and that the reorganisation would have involved her in accepting the same job role for substantially less pay.

The Facts

5. The Respondent, the William Hill Organisation operates a UK retail, gambling and gaming business. The Respondent has around 2,400 licensed betting offices, supported by around 10,000 shop staff.

6. The Claimant commenced her employment with the Respondent on 20 May 1998. The Claimant was promoted to the position of Manager and her contractual hours were 37.5 hours per week.

7. At the time of the circumstances leading to her dismissal, the Claimant was the Shop Manager of the Respondent's Battersea Licensed Betting Office. In her role as Shop Manager the Claimant's salary was £25,549.84 annually.

8. There was no issue that the Claimant had been a conscientious and valued member of the Respondent's staff.

9. The Respondent's operation in the betting industry faces increased competition from online gambling retailers, and accordingly requires a flexible organisation in order to operate efficiently and to remain competitive in what has become a crowded market.

10. On 22 July 2016 Nicola Frampton, Director, UK Retail, wrote to the Claimant informing her of proposed organisational changes, pages 34-35. The letter pointed out that there were a number of issues with it's organisational structure and the time had been reached to address them. The letter included the following:

> **Let me reassure you that we will not be closing shops as a result of the proposals and there will be no redundancy to shop based colleagues. My objective is to ensure that shop support structures are more effective, recognition is more consistent and career opportunities are more accessible and inspiring.**

> **The proposal to combine the Shop Manager and Deputy Manager roles into a Customer Experience Manager role would remove the overlapping responsibilities which exist today and would also address the contractual differences which currently make our pay structure inconsistent. For similar reasons we also plan to remove pay grades and move from three to two pay zones. There will be a financial impact for a number of people. To ensure no-one is financially impacted for twelve months, those people would be provided with a monthly supplement between 1 January and 31 December 2017.**
>
> **We are also creating a new role of Business Performance Manager with responsibility for ? shops. This role is intended to bridge the current Leadership gap, improve communication and focus on operational excellence. Furthermore, it supports my commitment to creating better career opportunities for you."**

11. The letter pointed out that the Respondent would be collectively consulting through the Employee's National Colleague Forum. The issues which the Respondent alleged it intended to address involved the following:

    1) An overlap of the roles and responsibilities of Shop Manager and Deputy Shop Manager. In essence the roles were the same.

    2) Inconsistencies in the Respondent's pay structure.

    3) Support structures were lacking or not clearly defined.

    4) The structure was too rigid, presenting little opportunity for career progression. The proposed reorganisation was identified as Project Grafton.

12. At paragraph 9 of her witness statement Liz Fancy stated the following:

> **The aim of Project Grafton was not to reduce the number of shop managers or deputy managers. Rather the aims were to improve efficiencies, reporting lines and improved support structures, remove overlaps in responsibility and create a structure that boosted career progression within the retail arm of William Hill. In the previous structures, district operations managers were overstretched and the career progression opportunities were identified to be few and far between.**

13. One of the aims of the Respondent in it's proposed reorganisation was to achieve consistency in relation to pay for all staff.

14. On 25 July 2016 Mike Beveridge, District Operations Manager, wrote the following letter to the Claimant, page 36:

> **I wanted to let you know at the earliest opportunity how the proposed changes would impact you personally, should they be implemented following the period of collective consultation. It is**

important that you understand how these proposals would affect you, so that you can raise any questions or provide any feedback through the collective consultation process.

Your current title of Shop Manager would change to Customer Experience Manager.

Your contractual days, hours and location would remain unchanged.

We are proposing to remove the shop grading scheme and at the same time reduce the number of pay zones from three to two. Your role would fall within zone one.

Your current salary of £25,549.84 including your historical red-ring protection of £4,828.84 is higher than the proposed salary bandings as outlined in the enclosed briefing pack and therefore your new salary will be £20,721 with effect from 1 January 2017. To ensure that you are not financially impacted for twelve months, you will be provided with an annual supplement of £4,828.84 which will be broken down and paid in twelve equal instalments until 31 December 2017.

At the end of the collective consultation period a decision will be made as to whether the proposals will go ahead. I will write you again to confirm the outcome at this time and the individual impact this will have on you.

15. The Claimant was within zone 1, which reflected the fact that she worked in the London area.

16. I found that the red-ring protection provided to the Claimant had been offered by the Respondent as an inducement to get her to sign a new contract some years previously which ended the Claimant's entitlement for time and a half for working on Sundays and double pay for working on Bank Holidays. The new contract the Claimant signed required the Claimant to work five days out of seven (Monday to Sunday) whereas previously she worked five days out of six (Monday to Saturday). It was not challenged that the Claimant's responsibilities would remain the same but it involved undertaking the same work for less pay. The proposed cut in the Claimant's pay involved a wage cut of nearly 20% and reflected her 2004 level of pay.

17. The Respondent contended that the removal of the red-ring protection was beneficial for the Claimant because she would then be eligible to receive pay increases on base pay which she had previously not received. However it was not challenged that the Claimant would not have achieved her existing pay, once it had been reduced, for a very significant period of time.

18. The proposed changes to the roles of shop managers and deputy managers were set out in a document, pages 37-49 of the bundle. In an opening message from Nicola Frampton, Director, UK Retail, the following was stated:

These proposals are part of a series of planned modernisations to

> **the retail business, including upgrading the network infrastructure, rolling out self-service between terminals, Wi-Fi and tablets in shops and new uniforms and branding from next year.**
>
> **Let me reassure you that we will not be closing shops as a result of the proposals and there will be no redundancies to shop based colleagues. I want to ensure that your support structures are more effective, recognition is more consistent and career opportunities more accessible and inspiring.**

19. The document also stated that if there was a detrimental financial impact the employee concerned would be asked to sign a new contract. The document also provided details of a consultation period. The document also provided a serious of frequently asked questions (FAQS) and in relation to the question "If I am asked to sign a new contract and I don't agree what will happen?", the document provided the following answer:

> **Those who refuse may ultimately have their existing contract terminated on notice, with the offer to stay with William Hill on a new contract (with new terms and conditions) to start at the expiry of their notice period. You would have your continuity of service preserved.**

20. A consultation took place through an elected employee representative forum identified as the National Colleague Forum. The consultation period commenced on 21 July 2016 and the intended date for the commencement of the implementation of the Grafton proposals was 1 January 2017. The Claimant accepted that she had passed on her concerns to her representative involved in the collective consultation.

21. The National Colleague Forum met on three occasions, namely 10 August 2016, 22 August 2016 and 12 September 2016, pages 52-60, 61-68 and 69-76. The Claimant who was a longstanding employee of the Respondent raised through her Colleague representative whether redundancy could be an option for shop and deputy managers. At page 74 of the collective consultation meeting on 12 September 2016, the meeting notes included the following entry:

> **The representatives argued it would have been more appropriate and fair to offer longstanding shop managers the option of redundancy, given the personal impact.**
>
> **Nicola (Frampton) empathised with the situation for longstanding shop managers, hence the reason for the paid supplement period which would enable colleagues to take time to adjust to this. Nicola went on to reiterate that this isn't a redundancy situation as there is no reduction in headcount and all roles have been secured within the new structure. Treating everyone consistently has been an important principle of the process and for this reason it is not possible to treat people differently based on their tenure.**

22. Following the collective consultation, there were individual consultation meetings with the Claimant to discuss her reluctance to agree to a new proposed contract. On 14 October 2016 Mike Beveridge, District Operations Manager, sent the

following letter to the Claimant, pages 78-79.

> **I write further to Monday, 3 October when Susie Sirs met with you and provided you with a copy of your new employment contract.**
>
> **Susie made it clear that if you agree with the changes, you would return a signed copy of the new employment contract to her by Friday, 7 October. To date we have not received a signed copy of the new employment contract from you.**
>
> **I therefore request that you attend a meeting on Monday, 16 October at ….. I will be Chairing the meeting.**
>
> **At the meeting I will be discussing:**
>
> 1. **The business case behind the changes.**
> 2. **Re-cap as to process to date including the collective consultation period with the National Colleague Forum where we discuss the changes in detail and the business reasons for those changes and you will be provided with the opportunity to raise questions and queries which will all be responded to and taken on board.**
> 3. **The final decision to proceed with these changes and how these have been amended as the result of the consultation process.**
> 4. **What your new employment contract looks like and specifically how it differs from the terms and conditions you are employed under currently.**
> 5. **Your reasons for not agreeing to the new employment contract.**
> 6. **Next steps.**
>
> **If you would like to return your signed new employment contract prior to this meeting, I will cancel the meeting unless there is anything further you wish to discuss.**
>
> **If not, I look forward to discussing the above further with you at the meeting.**
>
> **If you have any questions in the meantime please contact HR.**

23. Mike Beveridge met the Claimant on 17 October 2017, pages 80-81. The Claimant continued to express reluctance about signing the new contract and said that as she had been with the Respondent for a long time that accordingly she should retain her level of pay. Mike Beveridge asked the Claimant whether it was fair for people coming in to the Respondent to receive less pay than those who were already there and the Claimant stated that in circumstances of her long employment with the Respondent she considered that it was fair. The Claimant was also informed that as she had not signed up to the new contract she would

be asked to attend a second and final meeting when a decision would be made whether her employment should be terminated on notice and that she may be offered re-engagement on the new terms.

24. On 2 November 2016 Mike Beveridge wrote to the Claimant, pages 84 to 85, stating the following:

> **I made it clear that if, following the meeting, you agree with the changes, you could return a signed copy of the new Employment Contract. To date, we have not received a signed copy of the new Employment Contract from you.**
>
> **I therefore request that you attend a final meeting on Monday, 7 November 2016 … I will be Chairing the meeting and Barry Weatherall will be in attendance to take notes. You are permitted to bring a companion along to this meeting with you on the basis that they are a National Colleague Forum representative, a current colleague or a recognised trade union official.**

25. Mike Beveridge's letter pointed out that one outcome of the meeting may be the termination of the Claimant's current employment on notice and an offer of re-engagement on the terms contained within the new employment contract.

26. The meeting did not take place as arranged because the Claimant had been ill. The meeting finally took place on 24 January 2017. Tara Collins, Area Manager, conducted the meeting on behalf of the Respondent. I found that the meeting was conducted appropriately by Tara Collins and that it afforded the Claimant the opportunity to explain her reasons for not signing the new contract.

27. At the meeting the Claimant was asked whether she had thought about applying for the new role of Business Performance Manager which was a higher grade role attracting a higher salary band. The Claimant stated that she was unable to do so because the new role involved employees being required to work five days out of seven because she had child care issues and that she was happy as a shop manager and did not want the pressures of a new role.

28. At the meeting the Claimant again stated that she thought that current managers should be allowed to retain their salary and that new employees should start on the reduced salary. The notes of the meeting are at pages 95-98.

29. On 26 January 2017 Tara Collins wrote to the Claimant, pages 99-100. In her letter Tara Collins stated that she'd come to the decision to terminate the Claimant's current contract on notice to terminate on 18 April 2017. The letter also provided the Claimant with the opportunity of agreeing to the new employment contract during the notice period and that if she did so the formal notice to terminate her employment would be withdrawn. The letter also pointed out that if the Claimant chose not to accept the new employment contract during her notice period she would be offered re-engagement according to the terms attached to the letter, and that her continuity of employment with the Respondent would be preserved.

30. On 31 January 2017 the Claimant wrote to the Respondent raising a grievance letter, pages 104 to 105. In her letter the Claimant pointed out that she had been

told that there was no right of appeal and that she should have been informed that she had the right to appeal the decision within five days. The Claimant's letter also stated that she felt she habeen bullied into signing a contract that she did not agree with and pointed out that her personal circumstances did not allow her to sign the new contract with a wage cut of almost 25% which was unacceptable as she was already struggling with the current rate of pay. The Claimant's letter also pointed out that she had not been informed that a decision had been made in 2012 to end pay rises for red-ring managers, she had worked for William Hill for nineteen years in May 2017 and would be earning less than she did in 2004.

31. On 20 February 2017 Deborah Mowbray, Human Resources, emailed the Claimant proposing a meeting. The meeting took place on 3 March 2017.

32. On 4 April 2017 Tara Collins wrote to the Claimant, pages 113-114. In her letter Tara Collins bulleted the following:

- **"As part of the transformation process, the management team explained at the time that you had the right to put in a written complaint. Had you raised a complaint at the time, the team would have dealt with this in line with our normal grievance procedure. Therefore, this was your opportunity to raise any formal complaint, which has now expired.**

- **The company followed a robust consultation process with you at the time. You attended several meetings with Michael Beveridge, Area Manager, and myself where you had the opportunity to ask questions and to seek clarity about the process.**

Therefore it is with regret that your grievance falls outside of the deadline when you had the right to raise a complaint to the management team as part of the consultation process."

Submissions

33. I heard submissions from Ms Berry on behalf of the Respondent and Mr Hirschmann on behalf of the Claimant. Both Ms Berry and Mr Hirschmann supplemented their oral submissions with written submissions. In addition I was referred to the following authorities:

- **Genower v Ealing, Hammersmith & Hounslow Area Health Authority [1980] IRLR 297**
- **St John of God (Care Services) Limited v Brooks & Others [1992] IRLR 546**
- **Catamaran Cruisers Limited v Williams [1994] IRLR 386**
- **Hollister v National Farmers' Union [1979] IRLR 238**
- **Ladbroke Courage Holidays Limited v Asten [1981] IRLR 59**
- **Garside & Laycock Limited v Booth [2011] IRLR 735**
- **Scott & Co v Richardson EATS/0074/04, EAT**
- **Kerry Foods Limited v Lynch, EAT [2005] IRLR 680**

The Law

34. The Claimant was dismissed for some other substantial reason. The statutory framework is set out in Section 98 of the Employment Rights Act 1996 which provides:

(i) 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 principle reason) for the dismissal, and

(b) That is either a reason falling with sub-Section (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.

35. In the circumstances of this case the factual reason for the Claimant's dismissal to agree to new terms and conditions of her employment, adversely affecting her pay, as a result of the Respondent's business reorganisation. A business reorganisation resulting in an employee's dismissal can amount to some other substantial reason (SOSR) for dismissal.

36. The Tribunal has to remind itself that it is not it's role to substitute it's view for that of the employer at the material time and decide what it might or should have done in the circumstances. An employer is entitled to reorganise, and it is not for the Tribunal to determine whether things could have been done better or in a different way, provided there was a genuine business reorganisation. However it is for the employer to show that there were substantial reasons for the reorganisation and that it acted reasonably in dismissing the employee concerned having regard to the provisions of Section 98(4) of the Act which provides:

(4) ….. the determination of the question whether 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 employer,

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

Conclusion

37. I reached my conclusions having regard to the evidence to the submissions of the parties' representatives and to the relevant law.

38. I found that the Claimant refused to sign up to the new terms and conditions because they involved a very substantial drop in her level of pay.

39. I concluded that the process adopted by the Respondent had been reasonable in terms of informing employees, the consultation process involved, and the time

afforded to employees such as the Claimant, who resisted the change to consider changing their mind and agreeing to the new terms and conditions, thereby preserving their employment, albeit on less advantageous terms and conditions.

40. There is an issue as to whether the ACAS code of practice applies to SOSR dismissals, and it was contended on behalf of the Respondent at the Hearing that the Claimant was out of time for failing to complain about the process and that the consultation process had effectively disposed of her grievance.

41. In my judgment, the Claimant's grievance essentially raised grounds of appeal against her dismissal, and I was unable to accept the Respondent's contention that her grievance amounted to a complaint, which was out of time. The Claimant was challenging her dismissal rather than the consultation process, and in my judgment it was unfortunate that the Respondent had adopted such a dismissive approach to her grievance. The Claimant had raised valid issues about her length of service and was enquiring why she had been denied the right of appeal.

42. I accepted that the Respondent in the present market had a sound reason for it's reorganisation. Essentially the Respondent was seeking to streamline it's organisation. The issue was whether the Respondent acted reasonably in imposing new terms on the Claimant which involved a significant reduction in her pay. Eight other managers along with the Claimant had refused to accept the new terms and conditions.

43. This was not a case where the Respondent relied upon any particular financial considerations for the organisation and it was not contended that the Respondent had been forced to make pay cuts in order to avoid redundancies or that it was faced with a loss of profits. I found that the rationale relied upon by the Respondent on the evidence involved consistency in the pay structure for employees such as the Claimant.

44. It had been put to the Claimant in express terms by Mike Beveridge that it was not fair for new employees coming into the business into the same role as the Claimant to receive less pay than the Claimant. I considered that with some justification the Claimant had replied that she did not understand why it was unfair for a new employee to be paid less than an existing employee with eighteen years' service with the Respondent.

45. I considered that the Respondent was prioritising it's concept of fairness to new employees rather than considering the implications of longstanding employees such as the Claimant who were confronted with a substantial pay cut. I had regard to the judgment of the EAT (Landstaff J) in **Garside & Laycock Limited v Booth [2011] IRLR 735** and to paragraphs 22-23 of the reported judgment:

> ***But it is right to point out that 'some other substantial reason' is identified not in terms of a specific reason which justifies dismissal but as being of a kind (or, if you like, category or class, but 'kind' is the statutory word) as to justify the dismissal of an employee; in other words it is a broad category of case. To identify that there is a substantial reason falling within Section 98(1)(b) does not therefore answer their question whether it is reasonable or unreasonable for the employer to dismiss a given***

employee for that reason.

In respect of that Section 98(4) question, an Employment Tribunal must look at the circumstances as identified by (4)(a); but it also has to determine the question, "in accordance with equity." That word may have a particular force in circumstances where for instance an employer proposes cuts in the wages of the workforce. It may be highly relevant to a decision as to fairness for a Tribunal to consider upon whom of the workforce those cuts would fall. Here it may well be that they fell across the workforce as a whole, but speaking more generally, there may be situations in which management proposes a cut to the pay of those who are not in management, but retains the pay of those who are in management as it has always been. A Tribunal would have to consider whether equity, with it's implied sense of fair dealing in order to meet a combined challenge of reduced trading profits, would be served by dismissals of those refusieniks not in management in such a case. Similarly, reasonableness will depend much upon the procedural aspects of the decision. That often requires a close focus upon the nature of those proceedings and how appropriate they were. It might involve issues as to the extent to which the workforce were or not persuaded by reasons which were not good and proper reasons for adopting a common approach in favour of cuts, when otherwise they may not have done so.

46. In the present case 12% of the shop managers were negatively affected by the Respondent's proposed changes by having their pay cut. There was no impact on 73% of the managers and 15% benefited from a positive impact on their salary. Only nine individuals including the Claimant refused to sign up to the new terms and conditions. In her evidence to the Tribunal Liz Fancy stated that all colleagues had to be treated consistently, irrespective of their length of service.

47. I found on the evidence that the Respondent had not anticipated that the red-ring would have continued as long as it did in circumstances where the pay of employees had not caught up as quickly as had been expected. The continued protection afforded to the Claimant had she accepted the new terms and conditions would have continued for a year from 1 January 2017 when Project Grafton came into force and at a rate of 50% from 1 January 2018 to 30 June 2018.

48. I concluded that the Respondent failed to act as a reasonable employer within the meaning of Section 98(4) of the 1996 Act by prioritising the need for consistency in the absence as I found of any regard for the impact on longstanding employees such as the Claimant. The Respondent's emphasis on fairness appeared to disregard the Claimant's understandable perception of unfairness by having a very significant pay cut to achieve parity with the salaries of new employees. I found that financial considerations were not a factor.

49. The desirability of consistency in my judgment, failed to take into account of fairness or equity in reaching i's decision to dismiss the Claimant. On the evidence the Respondent prioritised fairness to new employees coming in to the business and failed to have any or any adequate regard to the consequences to longstanding employees such as the Claimant who were very significantly prejudiced in terms of pay by the reorganisation.

50. I have concluded that the Respondent acted unreasonably in dismissing the Claimant for some other substantial reason of a kind such as to justify the dismissal of the Claimant holding the position of shop manager, having regard to Section 98(4) of the Employment Rights Act 1996. I considered that the Respondent displayed unreasonable inflexibility in relation to the Claimant's position, an inflexibility which I found was evidenced by its approach to the Claimant's grievance.

51. Accordingly it is the judgment of the Tribunal that the Claimant was unfairly dismissed by the Respondent.

52. A Remedy Hearing will be listed.

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Employment Judge Hall Smith

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Date: 15 November 2017