



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

MISS NICOLA-JANE WILKINS

ANGELA MORTIMER PLC

**Heard at:** London Central

**On:** 18 and 19 February 2019

**Before:** Employment Judge Oliver Segal QC

## **Representations**

**For the Claimant:** In person

**For the Respondent:** Mr Grundy, Counsel

## **REASONS**

1. The Claimant has applied for written reasons for the Judgment sent to the parties on 6 March 2019.

## **Evidence**

2. I had an agreed bundle of 356 pages; and I had witness statements and heard live oral evidence from: on the Claimant's behalf, herself; for the Respondent, Mr John Mortimer (Group Chief Executive), Ms Clare Cross (HR Consultant who was engaged to deal with the Claimant's appeal against dismissal) and Mr Chris Horsley (Chief Operating Officer). I consider that all the witnesses were doing their best to assist the Tribunal.

**Issues**

3. This was a straightforward unfair dismissal claim. The Respondent's reason for dismissal (not accepted by the Claimant) was redundancy.

**Facts**

4. The Respondent is a recruitment agency with just under 100 staff, mainly based in their London office.
5. The Claimant worked for the Respondent from January 2004, latterly as Head of Global Events, organising events and marketing for the Respondent.
6. In August 2017 the Respondent hired a junior Events Executive to work with the Claimant, so that the Claimant could focus more on the major events she organised. The Claimant believed this was to some extent a reflection of the Respondent's (Mr Mortimer's) view of her performance and initially was upset by that recruitment, even going so far as to send an email of resignation to Mr Horsley. However, that issue passed and in fact the new member of staff only remained with the Respondent for a few weeks.
7. In November 2017 the Claimant received a first written warning for an unrelated issue.
8. The Respondent's business had been performing less well in 2016 and badly in 2017, making a loss. Towards the middle of 2017 the Respondent, in the person of Mr Mortimer, initially sought to address that situation by seeing what could be done to increase the level of gross income. Efforts were made in that regard in the last quarter of 2017. That did not prove effective and by January 2018 Mr Mortimer turned his attention to cutting costs.
9. Mr Mortimer took the view, amongst other things, that the Claimant's role was no longer required and was not apparently justifying (in terms of business produced) the salary she was earning. He proposed that her role be made redundant.
10. He met with the Claimant on 15 March 2018 and explained that proposal, saying that the Claimant's duties, in so far as they continued to be performed, could be

absorbed by existing staff (recruitment consultants). He invited her to give the matter some thought. He invited her by letter to a formal consultation meeting, at which she could be accompanied, on 22 March.

11. That meeting took place on 22 March 2018. Mr Mortimer explained the need to cut costs as he saw it. The Claimant was concerned that the Respondent would not be able to run, or to run effectively, some of the events for which she had responsibility. Mr Mortimer told the Claimant that there did not seem to be any suitable vacancies within the business into which she might be redeployed – which the Claimant agreed was correct. Mr Mortimer assured the Claimant that her performance was not an issue.
12. A further meeting was arranged for 29 March 2018. The Claimant at that meeting said she did not believe the redundancy to be genuine and believed the Respondent was in the process of hiring a comms/events employee. Mr Mortimer denied that. Whilst the Claimant’s understanding of that may be explicable, I find that it was a misunderstanding. Mr Mortimer confirmed again that the Claimant’s duties would, in so far as they continued to exist, be absorbed by the sales team; but he anticipated that the Respondent would be holding far fewer events. That turned out to be so, I find, after the Claimant left.
13. There was discussion about whether the additional business obtained as the result of events organised by the Claimant (Return on Investment: ROI) had, historically, been such as to cover (or more) the Claimant’s salary of £40,000 p.a. plus on-costs. That resulted in the Claimant producing (she produced amended versions during the consultation process) a document titled ‘Events Business Plan’.
14. The Claimant believed that this document showed that her role provided value for money. Mr Mortimer took the opposite view. I am not really in a position to resolve that difference of opinion and it is not necessary for me to do so. I do find as a fact that Mr Mortimer, having considered the Events Business Plan (including the last iteration of it), was of the view that it fell far short of demonstrating the ROI he needed.
15. There was a third consultation meeting on 17 April 2018 (at which the last iteration of the Events Business Plan was provided to Mr Mortimer. There was

further discussion about the matters which had been discussed at the previous meetings, but nothing new of significance was raised.

16. Mr Mortimer decided to press ahead with his proposal and the Claimant was advised of her redundancy by letter of 25 April 2018 (she was to be paid in lieu of notice).
17. Since that time, the Respondent has not recruited other events staff and the events it continues to organise (which are fewer than before) are organised by the sales team. The Respondent has continued to reduce the staff numbers in its Central Services Team (those not employed in a sales role) and annual overheads in 18/19 reduced by 10% compared with the previous year.
18. The Claimant appealed her dismissal and the Respondent engaged Ms Cross to deal with that appeal. The Claimant alleged that:
  - 18.1. The redundancy was pre-determined and personal; Mr Mortimer did not appreciate the Claimant's performance of her role.
  - 18.2. It was an irrational business decision; the Claimant provided value for money.
  - 18.3. There was no proper consideration of alternatives such as the Claimant doing freelance work.
19. The appeal hearing was on 22 June 2018 and lasted well over 2 hours; following which Ms Cross obtained comments from various people, including Mr Mortimer and Mr Horsley. She gave careful consideration to the grounds of appeal and dismissed them for the reasons set out in a lengthy outcome letter of 13 July 2018. The Claimant confirmed in evidence that she felt she had been given a fair appeal hearing.
20. Much of the oral evidence focussed on the extent to which Mr Mortimer had, by 2018, concluded that the Claimant was not doing a good job and/or did not like her and had therefore made a decision to dismiss her for those reasons. In so far as that issue is one of fact, I find that Mr Mortimer did not hold the Claimant in high regard as a member of staff, but that this was not the reason for making her role redundant.

**The law**

21. Neither party suggested that any legal principle was engaged on the facts of this case, beyond the requirement for the Respondent to show that the reason for dismissal was redundancy and for the tribunal to adjudicate whether (per s. 98(4)) *“in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating [that reason] as a sufficient reason for dismissing the employee”*.

**Discussion**

22. I have some sympathy with the Claimant, who clearly was of the genuine view that her dismissal as a cost-saving measure was not justifiable commercially and that Mr Mortimer had taken against her and was looking to get rid of her.

23. I have found, however, that (whatever Mr Mortimer’s views about the Claimant and her performance – and, even, whatever little compunction he may have had about her dismissal) the reason for dismissing the Claimant was the Respondent’s equally genuine, and understandable, belief that it could save a significant sum of money in deteriorating financial circumstances by running fewer events and absorbing the organising of those events into the sales team. Indeed that is what happened.

24. In any event, it is not for the tribunal to substitute its own view as to the commercial sense of a commercial decision taken by the employer.

25. In terms of the extent and quality of the consultation process, I consider that it was acceptable and reasonable. Mr Mortimer gave the Claimant every opportunity to explain why he might have mis-assessed the situation or to propose other options to save money. The Claimant tried her best on the first point, but failed. She did not address the second.

26. I find – and this is effectively common ground – that there was no redeployment the Respondent could have offered the Claimant. (It is not, in law, relevant whether the Respondent might have continued to engage the Claimant on an ad hoc self-employed basis.)

27. The appeal process was fair and the appeal decision was made in good faith after careful consideration.
28. In the circumstances, I must find the dismissal to be fair.

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Employment Judge Segal

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Date 27 March 2019

JUDGMENT SENT TO THE PARTIES ON

28 March 2019

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FOR THE TRIBUNAL OFFICE