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EMPLOYMENT TRIBUNALS

Claimants: Mr R North
Mr D Cole

Respondent: Barking and Dagenham College

Heard at: East London Hearing Centre

On: 2nd & 3rd and 16th & 17th May 2019

Before: Employment Judge M Hallen (sitting alone)

Representation

Claimants: In person

Respondent: Ms G Crew (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that the claims of unfair dismissal made by the Claimants are unfounded and are dismissed,

REASONS

Background

1 The Claimants in their Claim Forms submitted to the Tribunal which were at pages 1 – 39 of the agreed bundle of documents asserted that they were unfairly dismissed by reason of redundancy. The Claimants asserted that the redundancy that led to their dismissals was a sham and that the Director of Finance and Estates who happened to be their line manager called Maxine Deslandes engineered their redundancy in order to dismiss them. In their witness statements submitted to the Tribunal, the Claimants set out a history of difficulties that they jointly had with Ms Deslandes that they asserted were the real reason for Ms Deslandes wishing to have them dismissed. The Respondent in its Response Forms contained at pages 40 – 67 of the agreed bundle of documents disputed that the redundancy that led to the Claimant's dismissal was in any way engineered by Ms Deslandes. The Respondent asserted that the genuine reason for dismissal was redundancy or some other substantial reason justifying the Claimant's dismissal namely a restructure within the meaning of Section 98(1)(b) of the Employment Rights Act 1996 (ERA).

2 The issues agreed between the parties at the outset of the hearing for the Tribunal were as follows:

2.1 What was the reason for the Claimants dismissal? The Respondent said that the reason was redundancy within the meaning of Section 98(2)(c) of the ERA. In respect of this section an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to (a) the fact that his employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was solely employed, or (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for the employees to carry out work of a particular kind in the place where he was so employed had ceased or diminished or are expected to cease or diminish. (Section 139 ERA). Alternatively, the Respondent asserted that the Claimants were dismissed for some substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held namely a restructure within the meaning of Section 98(1)(b) of the ERA.

2.2 If the reason for the Claimants dismissal was the potentially fair reason of redundancy, did the Respondent act reasonably in treating redundancy as a sufficient reason for dismissing the Claimants, taking into account Section 98(4) of the ERA? In particular, following the guidance of Williams & Others v Compair Maxam Ltd [1982] ICR 156, did the dismissal lay within the range of conduct which a reasonable employer could have adapted? Relevant issues for the Tribunal to consider in the light Williams were:

- (1) Did the Respondent adequately warn and consult the Claimants about the redundancy
- (2) Were the Claimants fairly selected for redundancy?
- (3) Did the Respondents take reasonable steps to seek redeployment for the Claimants?
- (4) Did the Respondent use the redundancy process as an opportunity to remove the Claimants from the Estate Department?

3 In this case, both Claimants asserted that redundancy was used as a sham by Ms Deslandes to remove them both because she did not want them in the estates department because of previous historic issues. The Respondents asserted that Ms Deslandes had nothing to do with the redundancy process and that redundancy was the genuine reason for dismissal and the Respondent followed a fair procedure to dismiss the Claimants in this regard. Furthermore, if the reason for the Claimants dismissal was some other substantial reason, namely a restructure, the question for the Tribunal was whether the Respondents acted reasonably in treating this reason as sufficient reason to dismiss the Claimants.

4 The Tribunal had in front of it two ring binders of documents made up of over 1000 pages which contained the pleadings and the relevant historical documents relating to both Claimants. The Tribunal heard first from the Respondent's witnesses being, Wijay Pitumpe, Chief Financial and Enterprise Officer employed by the Respondent who was the officer that took the decision to dismiss the Claimants by reason of redundancy, Janet Curtis-Broni, Executive Director for People and Organisational Development, and Yvonne Kelly, Principal and Chief Executive of the Respondent who was the Appeal Officer hearing the Claimants appeals against dismissal. These three witnesses prepared witness statements and gave oral evidence to the Tribunal. The Claimants attended in person and presented their cases for unfair dismissal jointly and were given some latitude by the Tribunal given the fact that they were litigants in person with limited knowledge of law and procedure in so far as it applied to the Employment Tribunal. Both Claimants prepared witness statements. In addition the Claimants called Mr Brian Foulkes who was the Estates Manager for the college and the Claimants line manager up until the time he left the college in late 2017. It should be noted that Mr Foulkes left the college's employment some seven months prior to the Claimants dismissal by reason of redundancy and therefore could not give evidence in respect of the redundancy process either with regard to the rationale for redundancy or the procedure that was followed by the Respondent. The Claimants also produced witness statements from Angela Milton, Rick Noble and John Haswell. Whilst the Tribunal read these witness statements it placed no reliance upon the content of the statements because the witnesses did not intend to give evidence and be subject to questions from the Tribunal or cross-examination. The Tribunal notified the Claimants on the first day of the hearing that this was likely to be the case and urged the Claimants to have any witnesses that they wished to give evidence to be in attendance at the Tribunal. As a consequence of the Tribunal's direction Mr Foulkes attended to give evidence personally on the third day of the hearing being 16 May 2019.

Facts

5 The majority of the written evidence contained in the Claimant's witness statements related to their difficult relationship with their line manager, Maxine Deslandes, Director of Finance and Estates who in 2015 was given overall control of the Estates Department by the Respondent. Mr Cole's witness statement made up of five pages contained four pages of historical background that related to his relationship with Ms Deslandes whilst Mr North's witness statement made up of ten pages contained seven pages outlining his issues with Ms Deslandes. The impression that both witnesses sought to give to the Tribunal was that Ms Deslandes was instrumental as a "guiding hand" 'behind the scenes' and was instrumental in engineering their dismissals by reason of redundancy. Mr Cole was employed as the Health and Safety Environmental Manager with the Respondent from 19 August 2013 until 31 July 2018 and Mr North was employed by the Respondent as the Facilities Contracts Manager from 21 January 2013 until 31 July 2018. The reason for both of these Claimants dismissal was by reason of redundancy.

6 The impression that the Claimants gave to the Tribunal was that almost from the commencement of Ms Deslandes control of the Estates Department from 2015 the atmosphere drastically changed for them and others within the department. A number of the historical matters raised by the Claimants in their witness statements went back as far back as 2015 being the time that Ms Deslandes took over responsibility for the estates department and some three years before their respective redundancy. The problem from the Claimants perspective was that they could point to no actual involvement by Ms

Deslandes as decision maker in the restructuring of the Estates Department that subsequently took place in June 2018. The Claimants quite readily accepted in cross-examination that the Respondent went through a yearly restructuring process to make financial savings for the following teaching year and so they were well used to such an occurrence. In addition, they accepted that Ms Deslandes was not involved in the consultation process apart from making the announcement to the entire department that the restructure would be happening at the outset in June 2018. In addition, in cross-examination it became clear that Ms Deslandes had some input in respect of the preparation of the job descriptions which were prepared by Mr Pitumpe, Chief Financial Officer and Dismissing Officer who had previously managed the Estates Department and was well informed as to its workings. The Claimants asserted that Ms Deslandes was involved in some of the interviews for the caretakers in respect of their new posts in the restructuring subsequent to the redundancy process starting in June 2018 but the Tribunal could find no evidence to support this. In order for the Claimants to succeed in their argument that Ms Deslandes was instrumental in engineering the Claimants dismissal by reason of redundancy the Claimants had to produce evidence that would satisfy the Tribunal balance of probability that Ms Deslandes had involvement in the decision making process that led to their dismissal by reason of redundancy and that this was related to the 'bad blood' that existed between her and the Claimants. Unfortunately for the Claimants, they were unable to do this.

7 It appeared to the Tribunal that the issues identified by Mr. North in the majority of his witness statement relating to contract variation and realignment of the job description as a Security Manager in July 2015, the core hours working request in February 2017, the CCTV privacy issues in February 2017, the Occupational Health interview in July 2017, the honorarium payment in September 2017, the cleaning contract issue in May 2018, the postal cover issue in May 2018, the removal of security officers in May 2018, the grievance case issued by Mr. Coles in June 2018 were all day-to-day management issues that were raised by Mr North at the relevant time and were dealt with by the Respondent at the relevant time in accordance with its procedures. Mr. North also accepted that he did not raise grievances on these matters at the relevant time. The Tribunal found no evidence that any of these particular issues had any impact upon the Claimants subsequent dismissal by reason of redundancy.

8 The issues raised by the Mr Cole and Mr. North in March 2017 relating to being required to work until five o'clock by Ms. Deslandes also had no impact upon their subsequent dismissal. With regard to this particular matter it was important to note that the Claimants actually succeeded in getting what they wanted which was to work their flexible contractual hours rather than work until 5.00pm. This contradicted their assertion that Ms Deslandes was dictatorial, got her own way and was controlling and domineering. Mr Cole in his statement also referenced issues of poor work performance that were raised against him and that were actioned by the Respondent in accordance with its disciplinary procedure in 2018. However, he accepted in cross-examination that with respect to these matters, he was able to appeal against the work performance warnings in accordance with the Respondent's procedures and that Ms Deslandes was not involved in the decision making process relating to any of the appeals that he subsequently made. He also confirmed that the Respondent followed its procedures as it was required to do in respect of these disciplinary warnings.

9 Mr Cole said at page 4 of his witness statement “*Maxine Deslandes appears to have a lot of power within the college and is able to dictate to a large degree, what goes on. There are many members of staff suffering silently with the same issues. Nobody says anything as they are concerned for their jobs.*” The Tribunal found no evidence to support Mr Cole’s statement that Ms Deslandes exercised the degree of power that he had conferred to her. The Tribunal accepted the evidence of the Respondent that Ms Deslandes was not a part of the Executive Team of the Respondent and that she was on the second tier or managers within the college. Furthermore, the Respondent gave evidence to the Tribunal which was accepted that Ms Deslandes apart from announcing the restructure in the Estates Department from June 2018 and having a limited input into the preparation into the job descriptions for the new roles in the new structure had no other involvement in the redundancy process that led to the Claimants dismissal. Furthermore, the Tribunal found no evidence that she was involved in any conspiracy to influence the decision maker Mr Pitumpe, who decided to make the Claimants redundant or in relation to Yvonne Kelly the Principal and Chief Executive Officer who dealt with the Claimant’s appeal against dismissal by reason of redundancy.

10 Mr Foulkes attended to give evidence to the Tribunal about his involvement with the historical background to support the Claimant’s contention that Ms Deslandes had instigated the Claimant’s removals from their positions. However, the Tribunal noted that Mr Foulkes left the Respondent’s employment at the end of 2017 which was some six months prior to the Claimants dismissal by reason of redundancy. Mr Foulkes was not able to give any evidence in respect of the process that the Respondents followed in respect of the redundancy process. Mr Foulkes did during his oral evidence to the Tribunal state that he had three meetings with Ms Deslandes prior to his departure at the end of 2017 in which Ms Deslandes allegedly stated that she wished to have the Claimants removed from the college by way of “hit list”. These conversations had to have occurred in July 2017 prior to Mr. Foulkes sickness absence. However, the Tribunal noted that this important evidence was not contained in his witness statement. Had these conversations taken place the Tribunal would have expected Mr Foulkes to have put such important evidence in his witness statements and also for the Claimants to have referenced such discussions in their witness statements. It appeared to the Tribunal that the Claimants had been conversing with Mr. Foulkes for some time prior to the hearing in relation to the preparation of evidence. It was inconceivable that Mr. Foulkes would not have mentioned such vital evidence to the Claimants for them to include in their statements to the Tribunal. Yet the Claimants statements make no such reference. As a consequence of this glaring omission the Tribunal did not accept Mr. Foulkes evidence that there were any such discussions about having the Claimants removed from the college by way of a ‘hit list’.

11 Barking and Dagenham College is a Further Education College in East London with approximately 12,500 students, 500 established staff and turnover of £35million. The college provides routes into learning from entry level through to MBA level including apprenticeships, higher level apprenticeships, higher education and job centre plus clients.

12 With regard to the restructuring of the college it was accepted by the Claimants that financial savings were made each year and the college established a restructuring process almost on a yearly basis to make such savings. The business planning process for the current teaching year commenced in the spring of 2018 and concluded in the early

part of the summer of 2018 with Section 188 letters going out to employees on 11 June 2018 as part of a collective consultation process. This letter was at page 541A – E of the bundle of documents. It confirmed to employees that a total of 9.8 full-time equivalent positions within the college were subject to proposed redundancies and this included eight people within the Claimants department namely Estates. There were a number of significant drivers in selecting the estates team for review including:-

- (a) The introduction of a centre of advanced technologies building requiring new skills within the estates and facilities team,
- (b) A business need to identify £1.9million savings to balance the 2018/2019 budgets as the organisations funding bodies continued to reduce funding; and
- (c) A business need to reduce the reliance on external contractors ensure that staff were able to meet ever increasing maintenance demands at all college sites.

13 Mr North was provided with a business case detailing the reasons for the reorganisation on 11 June 2018 which was at page 811 – 819 of the bundle of documents. He was informed of the new proposed structure and the reasons for it. This reiterated the reasons as stated above to make financial savings and to reduce the use of external contractors as well as outlining the proposed new structure. A new role of Head of States and Facilities was envisaged which was a more strategic role that would review and develop the estate strategy, lead on the tendering of all external contractors to obtain value for money, ensure contractors were adhering to the contract, develop a commercial income stream offering the estates services and ensure that key KPIs and targets were achieved.

14 Mr North was consulted on 25 June 2018 which notes were contained at pages 821 – 824 of the bundle of documents and he was given the right to be accompanied at the consultation meeting by a trade union representative or work place colleague. At the consultation meeting as confirmed at page 824, Mr North stated that the new job description had a lot more responsibility than the old job description with some duties completely new to him. He confirmed that it was a big step up for him albeit the salary for the role was exactly the same. Although the new job did require a qualification that Mr North did not have, the Respondent gave evidence to the Tribunal which was accepted that as part of the ringfencing exercise for Mr North he was not required to have this qualification as he was given a preferential interview as part of the restructuring selection process for the newly created Facilities and Operations Manager.

15 The Claimant was ringfenced to the posts of Facilities and Operations Manager and also Team Leader along with another employee, Mr Mitzi. However, Mr Mitzi dropped out of the selection process as he accepted voluntary redundancy. As a consequence, Mr North was the only candidate that was progressed forward to a competitive interview for the newly created position which was to be decided by an interview process alone as agreed with the trade unions as part of the selection process for the new positions in the new structure. Mr North confirmed that during the consultation meeting on 25 June he did not wish to be considered for the Team Leader role which he said was a manual job. Mr Pitumpe was the Chair of the Consultation meeting with Mr North on 25 June and it was

attended by Sally Moore the HR Business Partner. At the consultation meeting the selection process to determine Mr North's suitability for the role was discussed and confirmed as being by way of selection interview which would be judged by way of open questions to assess the suitability of Mr North in respect of the new position. He was advised that he was being ringfenced for the role which meant that he was being given preferential treatment and that the qualification that was specified in the job description would be disregarded in his case.

16 Mr North was interviewed for the role on 6 July which notes were contained at page 841 – 854 of the bundle of documents. The persons in attendance at the interview were Mr Pitumpe, Ms Curtis-Broni and Tony Myers, Assistant Principal along with Chris Famosa, HR Business Partner. The Tribunal had the opportunity of reviewing the notes and the marking which were in the bundle of documents and noted that the questions appeared to be open questions which were designed to allow Mr North to exhibit his potential suitability for the new role in the new structure. His answers were allocated marks by the assessment officers being Ms Curtis-Broni, Mr Pitumpe and Mr Myers which showed that he had either not met, partially met or fully met the essential requirements for the position. The Tribunal noted that the Respondents put in place an objective process to measure the Claimant's suitability for the position allocating relevant marks against objectively defined criteria for the position.

17 Mr North failed to demonstrate sufficient knowledge, skills and experience required for the new role and was given verbal feedback on the outcome of his interview on 24 July following Mr North's return from annual leave and following all ringfenced roles going through the same process. The verbal feedback that was given to Mr North was summarised in a letter that was sent to him on 24 July 2018 by Mr Pitumpe which was at 878 – 879 of the bundle of documents. As a result, Mr North was informed that he had three options which included being redeployed to the Team Leader position with salary protection for six months, to apply for any other alternative vacancies within the college with salary protection for six months or to take voluntary redundancy with an additional compensatory award of £1,500 (page 880). Mr North had already decided that he did not wish to apply for the Team Leader position and did not apply for any other alternative vacancies within the college as they were principally teaching positions. As a consequence, Mr Pitumpe wrote to the Claimant which was at page 880 of the bundle confirming his redundancy by letter dated 24 July 2018 stating the reason for dismissal being redundancy and confirming the effective date of termination being 31 July 2018. Mr North was given the right of appeal against dismissal which he exercised by way of a letter of appeal dated 30 July 2018 which was at page 883 of the bundle of documents concluding at page 898 of the bundle. The letter of appeal highlighted the history of difficulties that the Claimant had in respect of his manager Ms Deslandes referencing historical examples of these difficulties and asserting that Ms Deslandes was instrumental in engineering his dismissal by reason of redundancy.

18 The Claimant was informed of the appeal hearing which took place on 30 August and the notes were contained at page 913 of the bundle of documents. The appeal hearing was brought forward to 22 October at Mr North's request.

19 The college's Principal Yvonne Kelly chaired the meeting and was supported by Ms Janet Curtis-Broni and Wijay Pitumpe, Finance and Enterprise Officer. The Claimant chose not to be represented at the appeal meeting. At the hearing, the Claimant was

given a full opportunity to raise his issues with regard to his grounds of appeal. Ms Kelly dismissed the Claimant's appeal by way of a written letter dated 7 September which was at pages 925 – 928 of the bundle of documents. With regard to the reason for dismissal being redundancy, Ms Kelly confirmed that there were clear business reasons for the restructuring of the Estates Team and that the business case was provided to him at the start of the process on 11 June at which point he was informed that he was at risk of redundancy. She confirmed that his role was identified as one which would be deleted in the plan to restructure and that as a consequence he was ringfenced but not matched to the position of Facilities and Operations Manager by Mr Pitumpe after a ringfenced interview process that was objectively conducted. The Claimant was unsuccessful in the process which was communicated to him on 16 July after interviews had concluded with all ringfenced staff. On his return from annual leave he was provided with verbal feedback on 24 July which was summarised in a letter that was sent to him on the same date. With regard to his concerns about Ms Deslandes, even though he chose not to raise a grievance in respect of these matters, Ms Kelly determined that regardless she had considered his concerns about Ms Deslandes but could find no evidence that Ms Deslandes had any influence on the decision to dismiss him on the grounds of redundancy. She was mindful that this was a collective redundancy exercise which culminated in various posts being made redundant and did not simply relate to Mr North.

20 With regard to Mr Cole, he was provided with a business case detailing the reasons for the reorganisation on 11 June 2018 which was contained at pages 537 – 541 of the bundle of documents. The rationale for the reorganisation was the same as for the estates department and as was provided to Mr North. In Mr Cole's case, the proposal was to delete the position of Health Safety and Environmental Manager which was at grade K and to replace it with the position of Health Safety and Sustainability Manager which was graded higher and at higher salary being grade 11. It was proposed that the new role would be ringfenced for the existing staff member namely Mr Cole to apply for and emphasised that the new role would lead and support on health, safety and sustainability matters and would require the need to ensure:-

- (a) Health safety and sustainability strategy that was developed and reviewed;
- (b) Health safety procedures were developed, embedded and monitored and reviewed across the college sites;
- (c) Sustainability processes and procedures were developed and embedded and monitored across the college site with a new requirement of developing a commercial strand to health and safety services to ensure new income streams were developed. This was made clear at page 541 of the bundle of documents.

21 Mr Cole gave evidence to the Tribunal which was not accepted that the old and new roles were exactly the same. The Tribunal did not accept this evidence on the basis that the new roles were graded at different levels being grade K for the old and grade L for the new role which was paid at a higher level in addition the new job description contained at pages 164 – 168 of the bundle of documents which had a very different job purpose. The purpose of the old job which job description was at page 157 of the bundle of documents and was to develop support and give advice to service users on appropriate

management systems to ensure the effective management of health and safety and environment. The purpose of the new job which was at page 164 of the bundle of documents was much more developed and included promotion development and establishment of a positive culture within the college so that it could meet its legal requirements in terms of health safety and sustainability. Other additional requirements included, to ensure the effective management of health and safety sustainability across the college sites, to take responsibility for strategic development and strategies for health and safety and sustainability across the college, to take responsibility to support and give advice to managers and service users on health safety and sustainability matters and to develop health and safety services that could be commercially extended to external organisations. The latter was an entirely new responsibility.

22 Mr Cole was invited to an individual consultation meeting on 21 June 2018 which meeting was moved to 2 July 2018 due to him being on annual leave. Mr Pitumpe chaired the meeting with Sally Moore as the HR Business Adviser in attendance to advice on procedural matters. A copy of the notes of the meeting was at pages 565 – 569 of the bundle of documents. The selection process to determine Mr Cole suitability for the role was discussed and he was made aware that he would be ringfenced to the role and subsequently interviewed for it by way of open questions at an interview process at which he would be given the opportunity to show his suitability for the position. During the meeting, Mr Cole confirmed that the job descriptions did not appear to be very different albeit he accepted that the generation of income was a new requirement. Mr Pitumpe made it clear that the new role was different, was graded higher and required more strategic development moving forward. This was confirmed at page 568 of the bundle of documents which was the handwritten note of the consultation meeting.

23 Mr Cole was interviewed for the role on 12 July 2018 and the interview panel was chaired by Mr Pitumpe who was supported by Janet Curtis-Broni and Tony Myers, Assistant Principal along with Chris Formosa giving HR business advice. The notes of Mr Cole's interview were at pages 577 – 612 of the bundle of documents. They were structured in exactly the same way as Mr Norths with open ended questions being asked of Mr Cole to show his suitability for the position and marks allocated in respect of whether Mr Cole had not met, partially met or fully met the requirements for the new position. The Tribunal had an opportunity of reviewing these notes and noted that the Respondent had put into place what appeared to be an objective selection process conducted by three independent individuals who allocated marks in accordance with requirements of the new position dependent on the answers given by Mr. Cole.

24 Mr Cole failed to demonstrate sufficient knowledge skills and experience required for the new role and was given verbal feedback on the outcome of his interview on 13 July 2018 by Janet Curtis-Broni. This verbal feedback was summarised in a letter to Mr Cole dated 18 July 2018 which was at pages 618 – 620 sent to him by Mr Pitumpe. The letter was comprehensive and outlined Mr Cole's shortcomings in respect of the interview selection process with regard to strategy and influencing change, identification of risk, meeting deadlines, using data and equalities and diversity. In addition, Ms Curtis-Broni wrote to the Claimant to confirm his displacement by reason of redundancy by letter dated 13 July 2018 which was at page 615 of the bundle of documents. He was informed that he had two options which included an application for any alternative positions within the college with salary protection of six months or an expression of voluntary redundancy which warranted an additional compensatory payment of £1,500. Mr Cole chose not to

accept any of the options that were open to him and was dismissed by reason of redundancy on 31 July 2018 and paid his statutory and contractual entitlements. He was notified of this in writing by Mr Pitumpe on 14 July 2018 which letter was contained at page 636 – 637 of the bundle of documents. In addition, he was also informed of his right of appeal against dismissal.

25 Mr Cole appealed against his dismissal by a letter dated 31 July which was at pages 640 – 644 of the bundle of documents. In the letter of appeal he raised his previous history of difficulties with Ms Deslandes specifying that he believed that she was instrumental in instigating his dismissal by reason of redundancy. He also asserted that the new role was essentially the same as his old role.

26 An appeal hearing was arranged with Ms Yvonne Kelly the Principal of the college which appeal hearing took place on 3 September 2018. The notes of the appeal were contained at pages 649 – 669 of the bundle of documents. At the appeal hearing, Ms Kelly was the Chair of the panel and the decision maker. Ann McDonald the Assistant Principal presented management's case and Mr Cole presented his own case. Ms Moore was in attendance as the HR Business Partner advising. Mr Cole was given a full opportunity to raise his grounds of appeal as specified in his letter of appeal. Ms Kelly wrote to the Claimant on 11 September 2018 which was at page 674 – 677 of the bundle of documents dismissing his appeal against dismissal by reason of redundancy. Mr Cole's reasons for appeal were that (a) he believed the grounds for redundancy were inadequate and unfair and his current role was not redundant and secondly he believed that he had been unfairly selected for redundancy as the redundancy was engineered to remove him from the position.

27 After considering all of the evidence Ms Kelly made the following findings:-

27.1 That the college followed a clear and transparent process with Mr Cole being consulted throughout the process, being ringfenced for the new position that was created and given an opportunity at a competitive interview to demonstrate how his skills, knowledge and experience for the new role. However, he was unable in the view of the interviewing panel to do this. Ms Kelly confirmed that the Claimant was provided with detailed feedback on his performance and that the interview process appeared to be objectively and reasonably conducted.

27.2 She concluded that the new role was different from the old role in that it required somebody who could demonstrate a better strategic level understanding than the Claimant did. In addition, the new role required the post holder to generate income. She also considered whether the Claimant was engineered out of his position and found no evidence to support his contention confirming that the restructuring process applied across the college and was not simply limited to him.

Law

28 It is for the Respondent to show a potentially fair reason to dismiss the Claimant, Section 98(1) of the Employment Rights Act 1996. A potentially fair reason to dismiss the employee is redundancy. In respect of redundancy, the Tribunal have to consider:

- 1) was the employee dismissed? If so:
- 2) had the requirements for the business for employees to carry out work of a particular kind ceased or diminished? If so;
- 3) was the dismissal caused wholly or mainly by the state of affairs identified at stage 2 above? (*Murray & Another v Foyle Meats Limited* [1999] IRLR 562).

In addition, subject to the case of *Williams v Compair Maxam Limited* [1982] ICR 156 the Tribunal has to consider whether the employer:-

- 1) provided as much warning as possible with impending redundancies;
- 2) the employer consulted with the employee about potential redundancy;
- 3) whether the employer applied an objective selection process;
- 4) whether the employer considered suitable alternative employment for the employee.

Tribunal's Conclusions

29 In this case, the Tribunal had to establish whether redundancy was the genuine reason for dismissal and if it was whether the Claimants were dismissed fairly by reason of redundancy. If the Claimants established that redundancy was not the genuine reason for dismissal then the dismissal would be unfair. The Tribunal could come to this conclusion if the Claimants could show on the balance of probabilities that the redundancy process was a sham and was engineered to remove them.

30 In this case, the Tribunal accepted that redundancy was the genuine reason for dismissal as asserted by the Respondent. It was clear to the Tribunal that the Respondent was seeking to save £1.9million in order to balance its books moving forward and needed to reduce its reliance upon external contractors. The Claimants were provided with the business case for this and these cases were at pages 539 for Mr Cole and pages 724 for Mr North. The Tribunal accepted the evidence of the Respondent that this was a collective redundancy that affected not just the Claimants but other members of staff within the college and that the trade unions were consulted in accordance with the statutory requirement as well as being consulted on the criteria to be used for selection. There was evidence in the bundle of documents that related to the Section 188 letter and this was at pages 541 A – F of the bundle of documents which showed the timetable for the process as well as the persons that were being affected. It seemed to the Tribunal that the statutory definition of redundancy had been met and that the needs of the Respondent for the Claimants to undertake their roles had ceased or diminished or were likely to cease or diminish. The Respondent wished to remove the old positions that Mr Cole and Mr North undertook and to replace them with two new positions. In Mr Cole's position the role was much more strategic and required the generation of income which his old role did not and was graded at a higher level. In the case of Mr North his new role required more managerial responsibility. This was made clear in respect of the job descriptions for the new positions. Mr Cole's was at page 164 and Mr North's was at page 175.

31 The Claimants main contention was that the redundancy situation had been engineered by their line manager Maxine Deslandes in order to get them out of their positions. However, the Tribunal found no evidence to support this. Furthermore, the

redundancy process that was applied to the Claimants operated across the board and affected not just them. The Claimants in their statements raised a number of historical matters in respect of their dealings with Ms Deslandes which they said led to her instigating and engineering a redundancy process that led to their dismissal. However, with respect to these historical matters, a number of these were well before the redundancy process and went back as far as 2015 when Ms Deslandes took over the management of the estate department. For example the desk move was in February 2017 and the flexible working request was in March 2017. It appeared to the Tribunal that none of these matters were linked to the redundancy process. Furthermore, in respect of the Claimant's not wishing to work until 5.00pm, this was a matter which both Claimants were successful in arguing and persuading Ms Deslandes not to implement in their cases. This showed to the Tribunal that Ms. Deslandes was not as dictatorial or single minded as the Claimants asserted she was when it came to them. In addition, with regard to Mr Cole's work performance issues, he had an opportunity of complaining about these matters pursuant to the Respondent's disciplinary procedures and the appeals were dealt with by officers other than Ms Deslandes.

32 The Tribunal struggled to see how if any of the concerns raised against Ms Deslandes were true how they impacted upon the redundancy process that commenced in June 2018. Ms Deslandes did not appear to be involved in the redundancy process apart from announcing it to the department in the first instance and assisting Mr Pitumpe preparing the job descriptions. She was not involved in the decision making process which decision to make the Claimants redundant was Mr Pitumpe. She was not involved in the consultation process and was not involved in the interview process which process was conducted by a panel marking the Claimants against defined criteria which appeared to the Tribunal to be an objective and reasonable way. In addition she was not involved in the appeal process which appeal was conducted by the principal Ms Kelly.

33 Even if which the Tribunal found not to be the case, Ms Deslandes was involved in drafting the job descriptions, that would have made no real difference on the failure of either Mr Cole or Mr North in securing the roles. Both Claimants were given an opportunity in a ringfenced interviews with open ended questions to show their suitability for the positions. In Mr North's case the requirement for a qualification was expressly waived. Both individuals had a reasonable opportunity to show their suitability for the new post in the new structure and were asked questions to prompt them to give the requisite answers. The fact that they could not do so, in the Tribunal's mind, had nothing to do with Ms Deslandes.

34 As a consequence, the Tribunal found that the genuine reason for dismissal was redundancy.

35 The Tribunal then had to look at whether the Respondent followed a fair procedure in dismissing both Claimants by reason of redundancy. The Tribunal noted that both Claimants readily admitted that they had no real issues with the procedure that was followed which to them appeared to be a fair procedure. Nevertheless, the Tribunal reviewed the procedure that was followed in accordance with the guidance given in the Williams v Compair Maxam [1982] ICR 156 case and noted that the guidelines appeared to have been followed by this Respondent. Both Claimants were given as much warning as possible of their impending redundancy so as to enable them to be informed of the procedure that would be followed which included the selection process for the new posts

as well as an opportunity to find suitable alternative employment. The Claimants were consulted with on an individual basis and told of the criteria that would be used and the criteria that were used appeared to be applied in a fair and objective manner with the Claimants being told of their options after they had been selected for redundancy.

36 Specifically, the Tribunal noted that the process applied across the college and a Section 188 letter was sent to the effective staff which is at pages 541A – E of the bundle of documents.

37 The Claimants were consulted with on an individual consultation process as referenced in the facts section of the judgment and were offered ringfenced interviews and an opportunity to apply for suitable employment within the and an appeal process was applied.

38 The Claimants were fairly selected in accordance with predefined and objective criteria which involved an interview which had been agreed with the trade unions as being the best way forward. The selection process appeared to be a fair and reasonable one with the Claimants being provided with the relevant information being job descriptions and person specifications having a ringfenced interview for the jobs and being able at an interview to demonstrate their competencies for that job. In addition, Mr North was given the opportunity of a ringfenced interview for a Team Leader position which he chose not to accept even though it had salary protection for six months. In addition, Mr Cole could also have applied for the Team Leader and both Claimants could have applied for alternative vacancies that were available at the college. Furthermore, the Claimants were given the opportunity to apply for voluntary redundancy with additional payments if they signed a settlement agreement.

39 For the above reasons, the Claimants claims for unfair dismissal were found by the Tribunal to be unfounded and were dismissed.

Employment Judge M Hallen

Dated: 22 May 2019