



EMPLOYMENT TRIBUNALS

Claimant Mr M Robinson

Respondent: Tanvic Group Limited

HELD AT: Leeds **ON:** 12, 13 and 14
November 2018

BEFORE: Employment Judge Shulman
Mr G Harker
Mrs S Robinson

REPRESENTATION:

Claimant: Mr P Smith, Counsel
Respondent: Mr E McFarlane

JUDGMENT

1. The Claimant was unfairly dismissed.
2. The Claimant was discriminated against on the ground of his age.
3. The matter of remedy is adjourned until 10am on 8 January 2019.

REASONS

1. Claims

The claims in this case are unfair dismissal and direct discrimination in respect of age.

2. The issues

The issues have been set out in the case management summary of the hearing by Employment Judge Smith on 8 May 2018. So far as the direct discrimination issues are concerned I will refer to the live issues using the numbering in that summary. They are 4.1, 4.1.1, 4.1.2, 4.1.3 and 4.1.4.

Numbers 4.1.5 and 4.1.6 were withdrawn during the course of the hearing.

Additionally in relation to direct discrimination there are numbers 4.2, 4.3 and 4.4.

In relation to the unfair dismissal claim the relevant numbers were 5, 5.1, 5.2, 5.2.1, 5.2.2 and 5.2.3 to 5.2.5 which were treated as one issue.

There were no time or limitation issues.

3. The law

We have had regard in particular to section 13(1) of the Equality Act 2010 which is well known to the parties. That relates to direct discrimination.

The unfair dismissal references are all in section 98 of the Employment Rights Act 1996. That is subsections (1)(a), (1)(b), (2)(c) and (4) and again they are well known to the parties .

4. Facts

The Tribunal having carefully reviewed all of the evidence (both oral and documentary) before finds the following facts:

4.1. The Claimant was employed by Tanvic Group Limited, the Respondent, until his dismissal on 6 November 2017. His employment commenced with Link Tyre Sales Limited on 23 October 2012. Link Tyre Sales Limited was sold to the Respondent with effect from 31 March 2014. At the date of his termination the Claimant was 69 years old.

4.2. The Respondent is in the business of automotive suppliers and a large part of the business relates to the supply and fitting of tyres in the commercial and retail sectors. As at November 2017 the Respondent had approximately 22 branches and 300 staff.

4.3. There were effectively three parts to the Group. That is the Respondent, Tanvic Group Limited, Steer Tyres (Steer), and they both operated essentially in the Midlands, and Link Tyres (Link) which operated in West Yorkshire and some part of Lancashire. The Respondent's head office is in Newark. The Link office is in Dewsbury.

4.4. The Claimant worked for Link.

- 4.5. The Claimant's contract did not change after the takeover by the Respondent. His sole manner of remuneration was salary. The Claimant accepts that the employee handbook which applied to him was not that referred to in his contract but was the Respondent's employee handbook which was produced to the Tribunal.
- 4.6. It is not in dispute that the Claimant had on several occasions requested a bonus additional to his salary, but the Respondent just let the request pass without response. On 7 June 2017 the Claimant was with a Mr Scott Walker, the Steer business development manager (BDM), who told the Claimant that all three of the BDM's in the Respondent organisation, excluding the Claimant, who were based in the Midlands, received product related bonuses. Mr Walker told the Claimant at the same time that those BDMs attended quarterly sales meetings at Newark, to which the Claimant had not been invited.
- 4.7. The Claimant took the matter of bonus up with Mr Adrian Bourke, commercial director of the Respondent and the Claimant was rebuffed as he had been on previous occasions, when he had raised the subject. Mr Bourke admitted that he should have dealt with the question of the Claimant's bonus with the Claimant.
- 4.8. The Claimant had no contractual right to bonus, but as it turned out neither did the other three BDM's, who received a bonus at the discretion of Mr Bourke.
- 4.9. Apart from the quarterly sales meetings, the Claimant also complains that he (in common with Mr Midgley, sales manager at Link and the Claimant's manager) was not invited to review meetings at Link on 13 March, 18 April and 1 June 2017, whereas the Claimant had been present at previous such meetings. Mr Bourke told us that the 2017 meetings were operational meetings, except for the June meeting, which was a fitter's meeting, and that he, Mr Bourke, had decided the sales team should no longer attend these meetings, but would instead have their own meetings and those meetings did take place.
- 4.10. Underlying these issues of bonus and meetings was a meeting, which we find took place on either 16 January 2017 or 27 February 2017, but in any case at the meeting was the Claimant, Mr Bourke and Mr Midgley. We find as a fact that on Mr Bourke's initiative he asked the Claimant how long he, that is the Claimant, intended to stay at the Respondent organisation and the Claimant said that he intended to work for another five years. We find that Mr Bourke went further and said that he needed to know the reasons going forward as the Claimant was over retirement age and Mr Bourke needed to think about replacements for the future.
- 4.11. Mr Bourke stated to the Tribunal that he did not consult the Respondent's retirement policy before having this discussion with the Claimant. Nor did he take advice. Amongst other things the retirement policy states that employees should, wherever possible, be permitted to continue working for as long as they wish to do so.
- 4.12. After this meeting and before the redundancy process, to which we will refer, Mr Midgley told us that he again discussed the question of the Claimant's age but on this occasion just between himself and Mr Bourke. He said that no conclusion was reached.

- 4.13. On 4 August 2017 Mr Bourke received an email from his boss, Mr Steve McCracken, the chief executive officer of the Respondent. The email related to Link and staff costs. It showed the staff average costs as 62.8% of gross profit for 2016 and Mr McCracken wanted to get the costs back to what he described as pre-acquisition average. The solution proposed was the loss of one sales representative, restructure of management and non-replacement of one fitter and savings already made. The only sales representative in Link was the Claimant. At this time there were price pressures, including those caused by currency fluctuation. Mr Bourke was looking for a targeted staff percentage at 52% of gross profit.
- 4.14. Earlier in the year (2017) Mr Bourke produced to the Claimant, amongst others, the review for 2016 and plans for 2017 for Link. Mr Bourke used this evidence, but nothing more up to date, as the basis for the forthcoming redundancy process, which he initiated by rather curiously entitled "business announcement" given to the Claimant and relating only to the Claimant, on 11 September 2017.
- 4.15. The business announcement gave as the reason for the redundancy situation a downturn in the volume of Link business, specifically a decline in sales and referred to the 2016 review. The Claimant subsequently disputed that the decline in sales related to him.
- 4.16. It should be noted that between the end of that review and the announcement there had been a considerable leakage in staff at Link, which had a considerable effect on the target set by Mr McCracken, but which was not taken into account as part of the redundancy exercise.
- 4.17. The first consultation meeting with the Claimant took place on 14 September 2017 and there was a subsequent one on 25 September 2017. The Claimant made a number of suggestions at and outside (in writing), none of which were taken on board and we will restrict our findings of fact relating to those suggestions of pooling and alternative employment.
- 4.18. With regard to the pooling, the Claimant maintained that the other three BDM's should be pooled with him. The Claimant also cites these individuals as comparators. The business announcement specifically referred to them, as it was said that they performed specific tasks, the markets were different and the locations distant. They also reported separately to a Mr Chris Downard, group sales manager, as opposed to the Claimant, who reported to Mr Midgley.
- 4.19. In relation to the performance of specific tasks, a sample job description of the three BDM's was produced to the Tribunal and the Respondent agreed that the Claimant's job description, had there been one, would have been the same. The sample provided had no mention of these specific tasks, which relate to cover for depot managers when they were absent, to quote Mr Bourke, for example, for holiday. When asked how much of their time this covering exercise took, Mr Bourke answered 30 to 35% of their time. We find that such a high percentage is highly unlikely for such matters as holiday relief.
- 4.20. We agree that there were more in the way of agricultural customers in the Midlands than in Link.

- 4.21. We accept that the locations were distant, but the Claimant did indicate at the meeting on 14 September 2017, which was a consultation meeting, that he was willing to re-locate.
- 4.22. As to reporting, it is true that the immediate reports were to Mr Downard and Mr Midgley. It should, however, be borne in mind that they in turn both report to Mr Bourke, who clearly made the decisions in this redundancy exercise.
- 4.23. At least one of the BDM's had Link on his business card. We had no evidence as to others.
- 4.24. As to suitable alternative employment, very simply the Claimant was not offered any. Whereas the redundancy policy of the Respondent requires that every effort be made to find alternative work and to discuss with their line manager (Mr Midgley) which vacancies are likely to be suitable, we find that this did not occur and we take into account the size and administrative resources of the Respondent.

5. Determination in the issues

After listening to the factual and legal submissions made by and on behalf of the respective parties the Tribunal finds as follows:

5.1. Primary facts – age

We find that the Claimant has proved primary facts. In particular the nature of the conversation in January/February 2017 and what followed, namely, what we find is unfair treatment with regard to the bonus and the manner in which the redundancy process was set up and at the very least the lack of accommodation afforded to the Claimant by the Respondent during the process.

- 5.2. We do not find that the question of invitation to meetings was related to the Claimant's age.
- 5.3. But we do so in relation to bonus.
- 5.4. We do not think that the Respondent has discharged the onus upon it to show that there was no age discrimination.

5.5. Unfair dismissal

We find that the reason for the dismissal related to redundancy because it is within the band of reasonable responses for the Respondent to argue that the needs of the business for an employee of a particular kind, being the Claimant, ceased.

- 5.6. However, there is much around the process that seems to us to be unfair, not the least of which relates to our findings relating to the primary facts, which of course affects the question of age discrimination.
- 5.7. We do not feel that the Respondent's main reason for not pooling of the BDM's because of the distance between Spofforth, which was the Claimant's home, and the Midlands was unreasonable and we take into account in so doing the Claimant's willingness to relocate.

5.8. The Tribunal is of the view that the Claimant received inadequate support from the Respondent (as required by its redundancy policy) on the question of suitable alternative employment, having regard to all the circumstances, and, as we have said, we are of the view that the Respondent was generally unreceptive to the Claimant's views as part of a proper and meaningful consultation exercise.

5.9. In all the circumstances we find that the Claimant was unfairly dismissed.

5.10. Comparators and conclusion on discrimination

So far as direct discrimination - age is concerned one matter we have not dealt with in our determinations is the question of comparators, which is dealt with in issue 4.2. The tests for who may or may not be a comparator and who should be in a pool for reasons of redundancy are different. The issue which exercised our mind in the pool exercise was distance. We think however that the Claimant's willingness to relocate does of itself make a difference so as to make Messrs Horry, Walker and Day good comparators. The Claimant was treated differently from them and we find that the Respondent directly discriminated against the Claimant by reason of his age.

6. Remedy

This matter is adjourned for remedy to Leeds Employment Tribunal at 10.00am on 8 January 2019.

Employment Judge Shulman

Date 23 November 2018

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