EMPLOYMENT TRIBUNALS

Claimant: **Mr T Melvin**

Respondent: **IBM United Kingdom Limited**

Heard at: **Southampton** **On: 13 - 14 January 2020**

Before: **Employment Judge Reed**
Members Mr Shah
Mr Knight

Representation
Claimant: **In Person**
Respondent: **Mr R Forshaw, Counsel**

JUDGMENT having been sent to the parties on 28 January 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In this case the claimant Mr Melvin said he had been unfairly dismissed by his former employer, IBM United Kingdom Ltd ("the Company"). He had also claimed that his dismissal was an act of unlawful age discrimination but he informed us that he no longer wished to take that claim forward.

2. For the Company it was said that Mr Melvin was dismissed by reason of redundancy and that that dismissal was fair.

3. On behalf of the Company we heard from Mr Brown, Vice President of Partner Growth Team, Ms Hazelwood, Manager of Growth Team, Mr Chapman, Sales Director and Ms Southam, People Programming Manager. We also heard evidence from Mr Melvin himself and our attention was directed to a number of documents, upon which we reached the following findings of fact.

4. Mr Melvin began working for the Company in 1988 and at the time of his dismissal he was Security Business Development Manager.

5. In 2016 and 2017 he was on secondment from the Company. Towards the end of 2017 he returned to the Company and thereafter and into the early part of 2018 he was looking for alternative work, either within the Company or on further secondment. That search was somewhat overtaken by an announcement by the Company on 27 March 2018 to the effect that there would be a head count reduction and that would have a potential impact in relation to Mr Melvin himself.

6. A redundancy process was then undertaken by the Company pursuant to which pools were identified, criteria were adopted and Mr Melvin was marked according to those criteria. On 19 April, as a consequence of the carrying out of that process, he was placed at risk of redundancy. Both before and after that date he applied for a number of positions within the Company but without success.

7. On 3 May 2018 Mr Melvin attended a meeting at which he was informed that he was being dismissed and he was given twelve weeks' notice of dismissal.

8. He appealed against that dismissal on 11 May but it took effect on 26 July. In fact, he was not notified that his appeal against dismissal was rejected until the early part of September, after his dismissal had taken effect.

9. In his original claim to the tribunal, Mr Melvin claimed unfair dismissal and age discrimination. However, before us the claim of discrimination was withdrawn, so we deal solely with the fairness of the dismissal.

10. Under s98 of the Employment Rights Act 1996 there are five potentially fair reasons for dismissal. There was no dispute in this case that the reason for dismissal was redundancy. It follows that the dismissal was potentially fair. We then had to go on to decide if the Company acted reasonably in treating redundancy as justifying dismissal.

11. There are typically - and there were in this case - essentially two "phases" in a redundancy process. The first identifies employees who will be retained in their existing jobs. The second involves consideration of alternative employment for those who are not so retained.

12. The tribunal will always analyse closely the actions of an employer in connection with the first phase of the process. It will wish to be satisfied, for example, that pools are properly identified, that reasonable selection criteria are adopted and reasonably applied and that there is proper consultation so that an employee has the opportunity of commenting on, amongst other things, his score.

13. However, Mr Melvin took no issue with that part of the process. The only grounds upon which he asserted that his dismissal was unfair related to the second phase of the process, together with the handling of his appeal. He said inadequate efforts had been made by the Company to secure alternative work for him and that the appeal had taken too long to resolve.

14. When it is accepted that an employer has acted reasonably in concluding that its employee should lose employment in his existing role, the tribunal is always liable to take a somewhat different attitude towards alternative employment in a completely different post. A “light hand on the tiller” is the more appropriate approach at that point.

15. We then turn to the specific criticisms made by Mr Melvin of the efforts made by the Company to identify an alternative role for him. Firstly he said that he was not given adequate assistance to find alternative positions. The Company has within its systems a site called the Global Opportunities Market place upon which all vacancies are advertised. Essentially Mr Melvin was left to make applications for any jobs that he identified might be suitable for him on that system. However, he was aware of all vacancies that existed and could take a view as to whether he wished to apply for them. In addition, when he did make applications and when his manager was aware that he had done so, that manager chased up the appointing managers in order to see that the applications were given proper consideration. We considered that that was an entirely reasonable position for the Company to take.

16. Mr Melvin pointed out that the Company had a system in place whereby potentially redundant employees were also assisted to seek and obtain employment outside the Company. There is clearly no obligation on an employer, acting reasonably, to have such a system. We did not think it appropriate to use that system as a “stick” to beat the Company with, by requiring a higher standard for internal appointments.

17. Mr Melvin suggested he might have been given advice in connection with the preparation of his CV. We remind ourselves he was a very experienced employee. There was no reason why the Company should have suspected he might need such assistance but in any event had he sought it no doubt it would have been provided. He did not seek it and the Company cannot be criticised for failing to appreciate that it might be required. There was no failure on the part of the Company to provide appropriate assistance for him in the process whereby he could seek alternative positions.

18. Secondly, Mr Melvin pointed out that in the course of the redundancy process he applied for secondment to an external company, All Blue Solutions but was obliged to withdraw that application at a stage when on the face of it there was every possibility he would succeed in being appointed. Mr Melvin was told the secondment could not go ahead because the Company had a policy to that effect that somebody who was at risk of redundancy - which by the relevant time he was - could not apply for secondment.

19. The problem with that contention involves consideration of the actual powers of the tribunal. The right to decide that there will be redundancies is one that the tribunal cannot interfere with. The Company has an unchallengeable right to decide how many employees will be dismissed. Had Mr Melvin gone on secondment he would have still remained an employee of the Company albeit that some 80% of his costs would have been borne by the company for which he was working. The tribunal is

simply not in a position to dictate to a respondent what its headcount should be.

20. We are bound to go on to say that even if we were wrong about that and we were indeed empowered to interfere in the way suggested by Mr Melvin, the Company acted reasonably in considering that secondment was not an appropriate course of action in the case of an employee who was at risk. On the face of it the bulk of the costs of employing such a person would be borne elsewhere but if that person was retained he would return at some point. While that point might be a year or two away, it might also be a matter of months or even weeks. The exact period could not be confidently predicted. In that situation we could see the logic in saying that secondment was not an appropriate step to take in the case of an employee at risk. It was reasonable for the Company to take that view.

21. The next ground upon which Mr Melvin said his dismissal was unfair was that he was improperly rejected for a number of positions for which he applied. There were five positions initially identified by him. Two of those were actually jobs that he applied for before he was even identified as at risk of redundancy. For the purposes of this claim we were analysing the reasonableness of the decision to dismiss. Whatever duty the Company had in relation to alternative employment, it could not extend to consideration of vacancies at that earlier stage. That is sufficient to deal with those claims but we were bound to go on to observe that even if these had been positions that we were prepared to analyse, there were clear reasons why Mr Melvin would not have been an appropriate appointee. He accepted himself in relation to one of the positions that the actual appointee was clearly better qualified than he was. In relation to the other, it was a marketing role which on the face of his CV he wasn't particularly well qualified for.

22. That left three other roles for us to consider. Two of those were customer relationship roles. We had to be satisfied that there were good reasons for him to be rejected for those roles and we concluded that there were. It was reasonable for the Company to analyse Mr Melvin's CV to consider whether it was appropriate to take his application forward. His experience in a customer facing role was not extensive and nor was his technical knowledge of the product he would be involved with. In short there were adequate reasons for him to be rejected for those two customer relationship management roles.

23. The final position for which he originally said he should have been considered was described as an "I2" role but Mr Melvin told us we did not need not consider it. He accepted that it was appropriate for him to be rejected for that post.

24. It follows that we concluded that the Company acted reasonably in rejecting Mr Melvin for the various roles into which he contended he should have been placed.

25. The final ground upon which it was suggested the dismissal might be unfair was that there was an extensive delay in resolving Mr Melvin's appeal against dismissal. It is right that it did take a considerable period of time for

that appeal to be resolved. It was raised on 11 May and it was in the early part of September that Mr Melvin received the outcome.

26. However, the starting point for considering the fairness or otherwise of the dismissal in relation to the period itself is that there is no obligation on an employer to offer an appeal where the reason for dismissal is redundancy. In his original claim Mr Melvin refers to the ACAS guidance in relation to disciplinary matters. This was not a disciplinary matter and therefore the provisions of that code simply did not apply in this case.

27. In any event, the Company did offer a right of appeal and Mr Melvin took advantage of it. We were satisfied that the appeal officer Mr Chapman did what he could to take these matters forward at a reasonable rate, at least in the early part of his considerations. He had got to the stage of effectively resolving the matter on or around 20 July 2018, before Mr Melvin was dismissed. There was a delay thereafter because of his absence on holiday and because of a mix up that appeared to relate to the Company's post room. However, this was not a case in which there was any sort of bad faith on the part of the Company. It did take perhaps longer than might have been ideal for the appeal to be resolved but we were satisfied that there was no prejudice to Mr Melvin by reason of that delay and in the light of all the considerations referred to above, we concluded that that delay did not render the dismissal unfair.

28. Our unanimous decision was therefore that Mr Melvin's claim of unfair dismissal failed and was dismissed.

Employment Judge Reed

Date: 4 March 2020

Reasons sent to parties: 9 March 2020

FOR THE TRIBUNAL OFFICE