



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr T Glister

v

Columbus UK Limited

Heard at: Norwich

On: 5 and 6 October 2020

Before: Employment Judge Postle

Appearances

For the Claimant: In person

For the Respondent: Mr Miller, Legal Executive

JUDGMENT

1. There was a genuine redundancy situation under Section 139 of the Employment Rights Act 1996.
2. The Claimant was not unfairly dismissed by reason of redundancy.

REASONS

1. The Claimant brings a claim that he was unfairly dismissed by reason of redundancy. The Claimant challenges whether there was a valid redundancy situation and claims even if there was a redundancy situation, the process adopted by the Respondent was inherently unfair.
2. The Respondents resist the claim on the grounds that there was a potentially fair reason to dismiss under the Employment Rights Act 1996, namely there was a genuine redundancy and / or some other substantial reason and further, that the process leading up to and declaring the Claimant's position was at risk; the warning and consultation that took place thereafter was fair and reasonable.
3. In this Tribunal, we have heard evidence from the Respondent Mr Noakes who took the final decision to declare the redundancy and Ms Hunter who carried out the Claimant's Appeal against the redundancy, all giving their evidence through prepared witness statements.

4. The Claimant also gave evidence, again through a lengthy witness statement. The Tribunal also had the benefit of a Bundle of documents consisting of 392 pages.
5. The facts of this case show that the Respondent is a global IT services and consulting business which specialises in designing, developing, implementing, upgrading and maintaining digital business applications. The Respondents appear to have two Divisions; an Enterprise Division dealing with large scale projects from the Nottingham site and the SMB Division dealing with smaller projects from the Cambridge site.
6. The Claimant was employed from 6 April 2013 by the Respondents in the SMB Division, working from the Cambridge site. On 1 April 2017, he became a Resource Manager. This role involved providing administrative and back up support for SMB projects and Project Managers. Such tasks as resource planning and forecasting projects, auditing and providing reports to assist the Practice Director with financial forecasting and holiday planning. The Claimant's role was clearly non-chargeable on the whole in that the Respondent was not able to charge the work that he did to any of its clients.
7. It was in or about early 2019 that the Respondent identified that the SMB Division was not performing to the expected profit budget. It was some time around this time a review was undertaken by Mr Noakes, the Practice Director, to identify potential cost savings within the Division in order to hopefully get the matter back on profit. There was a freeze placed on recruitment in 2019 save a Project Manager for the Enterprise Division was appointed, in March, however, due to notice requirements and holiday he did not start until July 2017.
8. It is clear the review identified that there was spare capacity within the department head roles as well as with the Project Managers. Tasks carried out by the Claimant could clearly be redistributed amongst those roles. As such the Claimant's role was identified as being potentially at risk of redundancy. It is clear on 11 July 2019 that the Claimant's Line Manager, Mr Quinn, met with the Claimant to inform him that his role was at risk.
9. At that meeting on 11 July 2019, Mr Quinn did explain to the Claimant that his role was at risk of redundancy for the following reasons:
 - There was reduction in resource management and project management office administrative activities;
 - Automation of a number of the PMO processes which form part of the Claimant's role, such as the use of automated power BI reports and auditing activities; and
 - Restructure of elements of the project administration activities to other members of the SMB team, such as resource identification, scheduling and identifying activities for periods of white space in diaries.

This was clearly confirmed in a letter to the Claimant which sets out the details of that meeting at pages 77 and 78 of the Bundle.

10. The Claimant was not informed at the meeting on 11 July 2019 that his role was being made redundant. Merely that his role was at risk of being redundant and that a redundancy consultation process was to follow.
11. The Claimant was invited to a first formal Redundancy Consultation meeting on 15 July 2019 by letter of 11 July 2019. At the meeting on 15 July 2019, it was Chaired by the Claimant's Line Manager Mr Quinn and the Claimant was accompanied by a Miss Parry, a Projects Director. It is clear, at that meeting again it was explained to the Claimant the reason why his role was at risk of redundancy. It was also explained that the possibilities of the alternatives to redundancy had been considered, such as the recruitment freeze and why those alternatives would not have the desired effect of increasing the profitability within the SMB Division. That was because there was less work of a kind that the Claimant carried out and there was spare capacity within the team who could absorb the Claimant functions. The detail of that meeting is set out in a letter of 17 July 2019 at pages 95 – 97 of the Bundle.
12. It was at the meeting of 15 July that the Claimant questioned his job description with the Respondents, which was used in his view as part of the redundancy selection process, and he believed did not fully show his job content. Therefore, further discussions were to take place about his job role and indeed a further meeting was set to discuss it. Unfortunately, the Claimant had indicated that he wasn't willing to attend the meeting to discuss an agreed and revised job description. He was, however, urged by the Respondent to reconsider the stance. Ultimately, a meeting did take place on 18 July 2019 with an Andrea Ward, the Respondent's HR Director, Mr Quinn and Miss Parry, in order to discuss various amendments to the job description requested by the Claimant.
13. At the end of the meeting, a revised job description was agreed with the Claimant. Miss Ward wrote to the Claimant on 18 July 2019, pages 110 and 111 of the Bundle, enclosing a copy of the updated job description and asking the Claimant to confirm in writing that he agreed that this now reflected the responsibilities of his role. It seems to be the case that the Claimant confirmed that he did agree with the revised responsibilities outlined in the job description.
14. It is also the case that on 18 July 2019, the Claimant raised some concern about Mr Quinn's involvement in the Redundancy Consultation process. He suggested that he had a lack of confidence in Mr Quinn to follow the correct process and that he believed that Mr Quinn had already made the decision about the outcome of the process. It is clear that the Respondents did not accept the Claimant's comments, nevertheless, for the avoidance of doubt, the SMB Director Mr Noakes was to take over the conduct of the Redundancy Consultation process going forward.

15. It is clear that Mr Noakes wrote to the Claimant on 27 July 2019 and we see that at pages 128 and 129 of the Bundle, to explain that he had reviewed the job description that had now been agreed by the Claimant and decided that the revision of the job description did not affect the rationale for putting the Claimant's role at risk because the amendments had not materially affected the job role content.
16. The letter of 22 July 2019 from Mr Noakes, also confirmed there was to be another Consultation Meeting on 24 July 2019. It is clear, at that meeting on 24 July 2019, Mr Noakes confirmed that the business reasons why the Claimant's role was at risk of redundancy, namely that there was a negative trend in terms of the budget deficit in the SMB Division which prompted a review of non-chargeable activities in order to identify cost savings. This was also against the backstop of reduction in workload for the Claimant's role, increased automation of PMO processes and a restructure of certain elements of Project Administration, all of which meant that the Claimant's role was at risk of redundancy.
17. It was also explained that Mr Noakes had decided that the Claimant's role should not be placed in a selection pool with other roles as those roles were clearly not interchangeable with the Claimant's. It was also explained why none of the alternatives put forward by the Claimant were viable in terms of achieving the aim of making the necessary cost savings. It was reconfirmed the position in relation to other vacancies within the business that the Claimant could choose to apply for. Ultimately, the Claimant does not appear to have applied for any possible alternative vacancies and Mr Noakes sets out a time table for the Redundancy Consultation process for the remaining steps. All of which was confirmed in a very detailed letter of 24 July 2019, pages 159 to 163 of the Bundle.
18. A Final Consultation meeting with the Claimant took place on 2 August 2019 and as at that stage, no viable alternatives had been found, the Claimant's role was therefore confirmed as redundant and his employment was terminating. This was confirmed again in a letter of 2 August 2019, which we see at pages 176 and 178 of the Bundle.
19. The Claimant then appealed against his redundancy by letter of 7 August 2019. An Appeal Hearing took place with the Respondent's Managing Director Mrs Hunter, on 17 September 2019. The Claimant was allowed a full and extensive opportunity to put forward his case and the Appeal Meeting appears to have lasted a whole day.
20. Mrs Hunter, having considered the Claimant's Appeal, did not uphold it and confirmed the decision to terminate the Claimant's employment by reason of redundancy. In summary, Mrs Hunter was satisfied there was a genuine redundancy situation, that the Respondents no longer required the Claimant to carry out the Claimant's role and she concluded that the process undertaken by the Respondent who carried out the consultation and dismissal was thorough and fair and that all relevant alternatives to making the Claimant redundant had been considered. Again, this is

confirmed in a detailed letter of 9 August 2019 at pages 192 to 193 of the Bundle.

The Law

21. So far as the Law is concerned, the definition of redundancy is defined in Section 139 of the Employment Rights Act 1996 and the definition applies both to claims for redundancy payments and for unfair dismissal claims,

(1) For the purposes of this Act, an employee who is dismissed shall be taken to be dismissed by reason of redundancy if that dismissal is wholly or mainly attributable to:

a) ...

b) the fact that the requirements of that business

i. for employees to carry out work of a particular kind;
or

ii. for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

has ceased or diminished or are expected to cease or diminish.

22. This is the broad definition that covers a myriad of situations. One of the most common misconceptions about redundancy is that it only arises where the employer is in financial trouble or struggling to provide work. In Kingwell and Ors v Elizabeth Bradley Designs Limited EAT/0661/02, Mr Justice Burton addressed the confusion. Thus,

“It appears to us that there is a fundamental misunderstanding about the question of redundancy. Redundancy does not only arise where there is a poor financial situation at the employer. It does not only arise where there is a diminution of work in the hands of an employer. It can occur where there is a successful employer, with plenty of work, but who perfectly sensibly, as far as commerce and economics is concerned, decides to reorganise his business because he concludes that it is over staffed. Thus, even with the same amount of work and the same amount of income, the decision is taken that a lesser number of employees are required to perform the same functions, that too is a redundancy situation.”

23. Therefore, provided the Tribunal is satisfied there are genuine business needs to consider redundancy and thus genuinely to consider cost savings and provided that the diminished requirement for work is genuinely the reason for dismissal, the Tribunal is not entitled, it is true, to look behind the Respondent’s decision or require the Respondent to justify how or why the diminished requirement has arisen. The next question to ensure that a fair redundancy has been carried out, is: is there adequate, proper

warning, it must be clear and genuine, and consultation with the employee must also be meaningful and consider reasonable and possible ways of avoiding a redundancy, such as alternative work and finally, where appropriate, should there be a pool? And if not, was the decision not to have a pool within the range of reasonable responses open to an employer? It is not what the Tribunal would have done, was it reasonable to decide what they ultimately did, i.e. no pool was necessary.

Conclusions

24. It is clear there was a genuine need to reduce costs; that is what the Respondents did, that is what they decided they needed to do. The work was diminishing, the Claimant's work could be absorbed by others and there is no argument there were other people doing the same work as the Claimant which should have been put in a pool with the Claimant. The Respondent's decision to place the Claimant at risk without a pool of employees is clearly a reasonable decision on the facts. His work had diminished and was easily able to be absorbed by the remaining group of work force. It is clear there was a need to reduce costs, it is clear there was a recruitment freeze in 2019 and clear that the person who was appointed in 2019 was appointed in March but was not able to take up his post until July following notice periods and holidays. That post would not in any event have been available for the Claimant to apply for; it had been taken in the March.
25. It is also, if one looks at the documentation in the Bundle, clear there was adequate warning of the redundancy and that was set out quite clearly to the Claimant following the meeting, in the letter of 11 July 2019 which we see at pages 77 and 78. It explains what the rationale is for putting the Claimant at risk.
26. We then have Consultation. It has to be said, there are a number of documented consultation meetings over a short period of time, as there often is in a redundancy at risk situation and by any objective analysis what was discussed and raised at those meetings whether by the Claimant or the Respondents, it was properly addressed. That included part time working and when raised by the Claimant, the decision to put at risk was wrong or his job title was wrong, that was clearly addressed. Further meetings were arranged to consider outside the consultation process whether his job profile was wrong and whether that made any difference to the redundancy selection. Amendments were made to his job role, they were agreed with the Claimant but clearly and quite rightly, Mr Noakes took the decision that they did not affect the Claimant's position being at risk of redundancy.
27. There was a genuine redundancy, there was a genuine need to cost save, there was a down turn of work and clearly the Claimant's work could be absorbed quite easily by other people. There was, without doubt by any objective assessment, looking at the letters that follow from each consultation meeting, a clear and fair meaningful consultation process.

There were no alternative positions that the Claimant could apply for, there had been a freeze on recruitment and as has already been said, the only person that was appointed was a Project Manager in March 2019 and for reasons already explained, he did not take up his post until July.

28. Therefore, it is clear that the reason for the dismissal was redundancy. There was no need for a pool given the Claimant's job profile and position. Although the Claimant believes there was potential for a pool of employees and he cites Luba, she worked part time and was in a more junior role. He also sites Claire but she had moved away from her Project Manager role and was focusing on Information Security and ISO Support.
29. Therefore, the decision to dismiss was fair and reasonable in all the circumstances and the Respondents have satisfied the requirements in order to achieve a correct and fair redundancy process.

Employment Judge Postle

Date: ...13.10.2020.

Sent to the parties on: 30.10.2020.....
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For the Tribunal Office