



EMPLOYMENT TRIBUNALS

Claimant

Respondent

P Jones

v

Canon Europe Ltd

Heard at: Watford

On: 7 & 8 December 2019

Before: Employment Judge Wendy Anderson

Appearances

For the Claimant:

Mr P Jones

For the Respondent:

Mr J Wilson

JUDGMENT having been sent to the parties on 22 December 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim form presented on 24th of September 2019 the claimant complained of unfair dismissal by way of an unfair redundancy process, which led to his dismissal on 30th of April 2019.
2. By a response form received on 4th of November 2019 the respondent resisted the complaint.

The Issues

3. The parties had agreed a list of issues as follows:
 - 3.1 Were the people who made the decisions around breaking up the Digital Systems and Publishing team into three parts suitably qualified and knowledgeable enough to have done so in a manner which was both fair and based on clear business logic?

- 3.2 Does the tribunal accept that the part of the Digital Systems and Publishing team, namely website localisation and publishing, that was amalgamated with Soneya Patel's quality control and Translation technology team, represented 90% of the work carried out in the Digital Systems and Publishing team.
- 3.3 Should the claimant, Peter Jones, have been considered for interview for the newly amalgamated team, along with Soneya Patel?

Evidence

4. I heard evidence from each of the parties via Cloud Video Platform. I received two bundles of documents one from each party. The claimant's bundle included a witness statement from the claimant and also from his witness Isabel Teodoro. In addition to its bundle the respondent filed a statement of fact and a witness statement from Cyprian Da Costa. The witnesses gave evidence at the hearing.
5. It was raised by the claimant that he had only received the witness statement and statement of fact from the respondent on the morning the hearing began. The respondent provided an explanation for the lateness of the documents. I clarified with the claimant that he was able to continue with the hearing after having some time to amend his cross examination whilst I was reading into the documents. The claimant confirmed that he was happy to proceed.

Relevant Findings of Fact

6. There was no dispute as to the primary facts in relation to the way in which employment terminated. They can be summarised briefly as follows.
7. The claimant was employed by the respondent from 8th May 2001 until 30th April 2019. With effect from 1st of April 2016 the claimant was appointed to the role of digital systems and publishing manager in the corporate communications and marketing service (CCMS) reporting to Cyprian Da Costa, the Content Operations Director. This involved management of three strands of work, referred to by the parties as web localization and publishing or digital publishing, Digital Asset management and PIN/syndication.
8. A restructuring of the business took place commencing in the autumn of 2018 following a review by a newly appointed CEO. The restructure was announced to company employees on the 18th of September 2018 and a document provided to employees dated 18 September 2020 explaining the consultation and selection process (R/94-105).

9. It was not disputed between the parties that the criterion for selection for redundancy was that those whose current roles would be impacted by more than a 50% change to that role were at risk of redundancy. Neither was it disputed by the parties that this was a fair selection criterion.
10. Consultation with Mr Jones commenced with the first of three meetings on 4th October 2018, and he also received a letter of the same date informing him that he was at risk of redundancy. Minutes of this and the two subsequent meetings on 10th October 2018 and 2nd November 2018 were produced and the claimant was given the opportunity to check and amend the minutes (R1-175-182). Each meeting was attended by the claimant, Mr Da Costa, and Rachel O'Prey, an HR Business Partner.
11. Feedback was sought from employees about the restructure and this was discussed with the claimant at each of the three meetings. He raised in both the first and second meetings that he would require an organisational chart for the proposed new structure before he could comment on the proposal.
12. On 22 October 2018 the chart was sent to him by Rachel O'Prey (R/142/143).
13. At the third meeting on 2nd November 2018 the Claimant raised, with his line manager Mr Da Costa, that he assessed his role as comprising 70% of his time being spent on digital publishing, he also queried why he had not been pooled for the QC and Translation Technology Manager role. He further noted that he did not think it was a good fit for his digital publishing team to be transferred to the QC and Translation Technology team.
14. Ms O'Prey responded to the points raised by the claimant on 2 November 2018 in an email dated 9 November 2018. This response noted amongst other things that the respondent's view was that 'c30-35% of the current role should be dedicated to overseeing digital publishing'. A rationale was provided for the break up of the claimant's team, the Digital Systems and Publishing team. An exchange of emails ensued in which the Claimant set out that he had concluded that none of his feedback had been accepted or taken on board. Ms O'Prey asked him to clarify this, inviting counter proposals. He responded that his comments had been addressed, but had not contributed to any change to the proposal. (R160/163).
15. The respondent advised the claimant on 4 January 2019 by letter that unless he secured alternative employment within the company redundancy would apply. (R244)
16. The claimant did not find alternative employment within the company and was dismissed by way of redundancy. His last day of employment was 30 April 2019.

Submissions

17. At the end of the hearing each party made submissions.
18. Mr Wilson, for the respondent, said that the decisions made as part of the change process were of strategic importance to the organisation. Mr Da Costa was appointed to lead the change for the CCMS function based on his competence and capability to carry out strategic change. The claimant had the opportunity to and rightly aired his views during the consultation process. His views were considered by Mr Da Costa as well as the strategic HR director and the HR business partner who were all involved in the design and implementation of the new structure. In response to the claimant's criticisms regarding Mr Da Costa's lack of knowledge of the claimant's business area, Mr Wilson noted that Mr Da Costa had appraised the claimant's work and there had been no indication of this view held by the claimant in the previous three years. He noted that Mr Da Costa had said in evidence that a few months before the change process commenced, he had asked the claimant to become involved in another project as he believed he had capacity.
19. The claimant questioned Mr Da Costa's assertion that the new structure worked well but noted that he had no visibility of this, and also that the respondent had offered no evidence. He stated that it was his categorical belief as the person who had lived and breathed the work for several years that management of the Digital Publishing workstream was a 90% effort. He noted in relation to the point made by the respondent about capacity that he had been involved in various extra projects over the years of his employment. He said that the respondent's assessment that Digital Publishing was only 30-35% of his work had not been substantiated, he had provided evidence to the contrary on his bundle and through an independent witness. He had a good understanding of the work of the QC and Translation Technology team, to which digital publishing was to be transferred, and was a suitable candidate to be considered for the manager role of the new team. The Claimant said that the respondent had failed to operate a fair and transparent selection process, or any selection process for the manager position of the newly merged team.

Conclusions

20. The question I need to answer is whether the dismissal was fair or unfair. This is a two stage process. The first stage is for the respondent to show a potentially fair reason for dismissal, and secondly if that is achieved, the question then arises whether dismissal is fair or unfair.
21. Section 98 of the Employment Rights Act 1996 identifies a number of potentially fair reasons for dismissal which include at s98(2)(C) that the

employee was redundant. I am satisfied on the evidence that the Claimant was dismissed for redundancy.

22. The second stage as set out at s98(4) of the Employment Rights Act 1996 is to consider whether the dismissal was fair. In a case of dismissal for redundancy this involves a consideration of the redundancy process. In this case it is not disputed between the parties that there was a need for redundancies, nor is there a dispute about the fairness of the criteria applied in selecting candidates for redundancy, or in relation to identifying alternative roles within the company. The claimant says the process was unfair because those involved in reorganising the structure of his work streams were not knowledgeable enough to carry out that role, that Mr Da Costa, his line manager wrongly assessed the claimant's time spend on a particular stream and therefore wrongly applied the criteria to him. Also, that he should have been allowed to interview for the role of manager of the QC and Translation Technology team.

23. Taking each of these in turn:

23.1 The reorganisation was designed by Mr Da Costa who was appointed to his role as Content Operations Director in the same year that the claimant was appointed Digital systems and publishing manager. The respondent says it had full confidence in Mr Da Costa's ability to design, implement and manage the change process. Mr Da Costa had appraised the claimant's work over a number of years. The claimant provided some of the appraisal comments in his bundle. The claimant had not previously raised any concerns about Mr Da Costa's ability to line manage him or formally questioned his understanding of the claimant's work. The claimant said it was his view and the view of the team that senior management did not understand their work. He also referred to Mr Da Costa having said to him informally in meetings that Mr Da Costa and his line management had limited knowledge of the workstream. The claimant provided his own minutes of a meeting with Mr Da Costa on 14th September 2018 (C/24) referencing this. I must consider whether the actions of the Respondent in appointing the team it did to design and implement the change was within the band of reasonable responses. I find that it was reasonable for the respondent to appoint the manager who had been Content Operations Director with CCMS for at least two years previous to the restructure of the division, and the claimant's line manager, to take charge of the restructure, and while I have considered the views of the claimant and Ms Teodoro that those managers lacked expertise, I do not accept the claimant's claim that this aspect of the redundancy process was unfair

23.2 During the consultation period the claimant made the case to Mr Da Costa that 70% of his working hours were spent on the digital publishing

strand . Mr Da Costa assessed this at 30 to 35% of his work. The significance of this, is that if the claimant had been transferred to the newly merged team with this work , in his view this was more than 50% of his work, and he should not have been at risk of redundancy on an application of the criteria. The claimant produced a number of documents in his bundle which he relied upon to show that in fact the Digital Publishing stream took up 90% of this time. In evidence Mr Da Costa said that he did not agree that workstream required 90% of a manager's time in order to manage the process. He noted that the reorganisation plan was such that some of the work would be outsourced. This point appears on the list of issues as agreed by the parties, however, it is not necessary for me to decide this point in order to decide whether the dismissal was fair. The criterion was that those whose jobs would change by more than 50% would be at risk of redundancy. Under the new structure, management of the Digital Publishing stream has been assessed as not requiring more than 35% of a manager's time. This is a business decision open to the respondent to make. This would clearly represent a change in the claimant's role of more than 50%. In the respondent's assessment that it should have been comprising of 30-35% of his work before the restructure, as the other two strands the claimant managed were to be moved away from him, this would involve a change in more than 50% of his role. The considered business decision of the respondent, taken by senior management was that the management of the Digital Publishing work would comprise no more than 30-35% of a manager's time after the restructure, and I accept that it was within the band of reasonable responses for the respondent to take this view.

23.3 Mr Da Costa gave evidence that the transfer of the Digital Publishing team to the QC and Translation Technology team under the management of Soneya Patel did not involve a change in that particular management role of more than 50%. The work of the Digital Publishing team is overseen by Ms Patel in addition to the streams she managed previously. As there is no dispute between the parties that the selection criteria was fair, then I do not accept the claimant's claim that it was unfair that he was not given the opportunity to interview for that role. The role was not at risk of redundancy and was already filled.

24. For these reasons I dismiss the claim.

Employment Judge Wendy Anderson
Date:09th February 2021.

Sent to the parties on: ...24/02/2021...

T Henry-Yeo
For the Tribunal Office