



EMPLOYMENT TRIBUNALS

Claimant: Richard Brown

Respondent: The Church of England Children's Society

Heard at: Liverpool **On:** 14-15 April 2021

Before: Employment Judge Ord

Representation:

Claimant: In person
Respondent: Mt Butler (Counsel)

JUDGMENT

The claimant's complaint of unfair dismissal is well-founded.

Reasons

Claim

1. By a claim dated 8 June 2020, the claimant brought a claim for unfair dismissal.

Issues

2. It is agreed that the reason for dismissal was redundancy.
3. The issue is whether the respondent acted reasonably or unreasonably in treating redundancy as a sufficient reason to dismiss the claimant. When considering this issue, I was asked to examine whether the respondent took appropriate steps to seek to redeploy the claimant and whether it

followed its own Organisational Policy.

Evidence

4. On the first day of the hearing, I had before me a 309 paged hearing bundle, a 39 paged witness statement bundle and the respondent's skeleton argument. I heard evidence from all the respondent's witnesses namely, Helen Leadbitter (Area Manager and national Young Carers Lead; also the claimant's line manager and dismissing officer); Rob Dickinson (Head of Philanthropy and Partnerships; also the manager shortlisting for Relationship Officer role); Victoria Jones (HR Business Partner); Kelly Harding (HR Business Partner); Paul Maher (Director of High Value; reviewed Rob Dickinson's shortlisting decision); Nikki Pawsey (Director of Supporter Communities and Groups; also the appeal chair).
5. On the second day of the hearing, besides the previously mentioned bundles, I had before me four additional pages that were added to the hearing bundle and numbered 293-296. I also had the claimant's written closing submissions in bullet format. I heard evidence from Victoria Jones, who was recalled to speak to the additional hearing bundle documents, and from the claimant. I heard closing submissions from the respondent's representative and from the claimant.

Findings of Fact

Context

6. The claimant was employed by the respondent from 23 March 2015. His role was initially as a Human Resources Business Partner covering northern operations, although for a period of six months in 2016, he also covered the Midlands and South West Area whilst Kelly Harding, also a Human Resources Business Partner, was on maternity leave.
7. In October 2017 he was successful in transferring to the role of Service Manager, leading two projects supporting young people across the Greater Manchester Area. This involved him having to learn new skills, as the work was very different to the Human Resources Sector that he had previously worked in for 30 years. The projects were delivered successfully.
8. In February 2019 he moved into the post of Project Lead for CAPE, a programme of work to upskill external bodies to deal with impact of parental alcohol misuse on children. The funding for the CAPE contract came to an end on 31/3/2020.
9. Redundancy consultations took place from the end of 2019 and the claimant was placed at risk redundancy, as was the whole of his team. He was issued with a redundancy notice from his line manager, Helen Leadbitter, on 10 February 2020.
10. Redundancies occur on an annual basis at the respondent organisation due to the generally ephemeral nature of the funding for its various projects. However, new positions often become available and the

respondent maintains a portal to which it directs employees at risk to seek potential alternative work within the organisation. Given the size of the organization (in excess of 800 employees), and the annual occurrence of significant numbers finding themselves at risk of redundancy, it is not disputed that using a portal is a reasonably practical way of publicizing potential redeployment opportunities within the organisation.

Organizational Change Policy

11. The respondent has an Organisational Change Policy and within it, a Redeployment Policy for redundancy situations. The most relevant parts of the Redeployment Policy are extracted below and provide that:
- 8.2 The Children's Society will do all that is reasonably practicable to provide staff at risk with access to redeployment opportunities and suitable alternative employment....
 - 8.3Employees at risk of redundancy have priority status for available posts within The Children's Society...
 - 8.4.2 Employees "at risk" will be given preferential consideration in respect of vacant posts within The Children's Society. This means departments must interview/consider employees at risk of redundancy before any other candidates, provided the employee is able to meet the essential criteria for shortlisting for the post.....
 - 8.4.4 Employees will be assessed against the essential criteria (set out in the person specification) for the post. This assessment process will include a behavioural based interview.....

Relationship Officer Post

12. On 19 January 2020 the claimant was alerted to a post on the organization's portal by a colleague, which she thought might be a redeployment opportunity. It was of Relationship Officer within the Philanthropy and Partnership team. The job was open to other candidates besides those threatened by redundancy.
13. Whilst there were other posts on the portal, the claimant did not consider any of them to be suitable and he was not offered any of them as an alternative.
14. The claimant accessed the portal and upon reading the job description and advert for the post, felt it was something he was interested in and for which he could demonstrate transferable skills. Although the post was a grade lower than he was currently on, he would benefit from protective pay for 12 months.
15. Recruitment to the Relationship Officer role was being handled by Rob Dickinson, Head of Philanthropy and Partnerships. The claimant contacted Rob Dickinson and they arranged to speak by telephone on 24 January 2020.

16. Following the conversation with Rob Dickinson, the claimant spoke to his line manager, Helen Leadbitter, and indicated his interest to her. He then contacted Nin Gould, the HR Advisory and Operational lead by e-mail dated 29 January 2020 expressing his interest. Her response was that, as he was not currently at risk (but in consultation), he would need to apply for the role and a full application would be required because the role was substantially different.
17. The claimant then made an application incorporating a statement in support. However, the information he provided was limited, based on his understanding that he would be able to expand on this at interview, where he believed he would be able to promote his suitability for the post.
18. The post was also open to other applicants who were not at risk. The applications were sifted on the papers and the claimant was not shortlisted for reasons of his written application not meeting the essential criteria for the job. His rejection letter was dated 19 February 2020, after he had received notice of redundancy on 10 February 2020. It was an automated response to all unsuccessful candidates and did not offer any feedback, saying this was due to the large number of applications.
19. The claimant had never been told that a sift would be undertaken based on the written applications, and that assessment of suitability was to be based on ability to meet certain essential criteria. Had this been explained to him, he would have prepared a more thorough written application against the essential criteria.
20. Rob Dickinson had been responsible for the shortlisting, yet when he and the claimant had discussed the role on the telephone, Rob Dickinson had not explained the shortlisting mechanism or the importance of the paper application. In fact, there was no advice from anywhere on the process or procedure and the claimant got no assistance or support from anyone in making his application, despite asking for support. In cross examination his line manager, Helen Leadbitter, said she remembered the claimant asking for support.
21. It is not disputed that the claimant was a competent employee who had successfully undertaken a range of high-level roles within the organisation and had experience and skills in different areas including interpersonal roles and developing external relationships. However, he had also undertaken his own administration and was competent with information technology and had devised his own databases.
22. When Rob Dickinson was asked in cross examination about the roles the claimant had performed, he said, other than HR manager, he knew very little about those roles and what they did. Nonetheless, Rob Dickinson did not seek to find out more about the claimant's experience and to better understand his abilities and skills. He did not explore with the claimant what his previous roles in the organization entailed, and did not consult others, such as the claimant's line manager. No discussion took place with the claimant as part of the process and the claimant was not given an opportunity to verbally demonstrate that the post could be a suitable alternative for him.

23. The claimant wrote to his line manager on 24 February 2020 saying he was surprised not to have been given an opportunity to explore the potential for redeployment and that he did not know why he had not been given the chance to discuss the role. He felt the process ignored those at risk of redundancy. He asked for certain information including the composition of those who had been shortlisted (external/internal/at risk). He also requested feedback on why he was not deemed suitable, what essential criteria he did not have, and how this had been determined in the absence of an interview or discussion.
24. Victoria Jones, HR Business Partner, provided details of why the claimant had not been shortlisted in an e-mail dated 26 February 2020. She said the role was not deemed suitable alternative employment and therefore the claimant's application was treated in the same way as other internal applications. She did not explain why no discussion had taken place with the claimant, despite him being at risk and his clear interest in the post. In cross examination, Victoria Jones said the first stage of the process was to assess whether the post was a suitable alternative and it was for the claimant to demonstrate this. However, she admitted that the respondent's communication could have been better.
25. In her e-mail Victoria Jones set out the essential criteria against which the shortlisting had been based. There were four of them and they had been taken from the Relationship Officer job description. They had not featured in the job advert, which set out more generic requirements. This e-mail was the first time the claimant had been told what the specific essential criteria were for the job. Neither the criteria nor the person specification for the job had been made clear to the claimant previously.
26. Victoria Jones' e-mail set out the ratings of the 16 candidates who had applied. With a possible score between 0 and 4, it showed that the claimant had scored zero. It also gave brief feedback on the claimant's application, saying it did not match the requirements of the job description or evidence the requirements for the role. The e-mail said:
- The application focused on senior leadership skills and experience, project delivery management skills and experience, and delivery against organisational strategy, however these are not required for this mainly administrative, systems/data input, prospect research, low financial value application writing position.*
27. This is the only record available on the system of the claimant's application, as the data relating to rejected applications was automatically wiped from the system thereafter. No hardcopy notes were made relating to shortlisting. Therefore, it is now not possible to ascertain what was actually recorded on the system.
28. Victoria Jones' e-mail also said *"If you still believe the decision made during shortlisting was not correct, please let us know why via e-mail by Friday 28 February"*.

29. The Claimant wrote to his line manager on 26 February 2020 saying that he wished to appeal the decision to make him redundant and outlining why he felt the procedure relating to his application for redeployment as a Relationship Officer had been unfair. He also wrote to Kelly Harding, another HR Business Partner, on 27 February 2020 saying that it did not appear that his application would be considered under the terms of the respondent's redeployment process and therefore he wished to appeal against the decision to dismiss him through redundancy.
30. In another e-mail dated 27 February 2020, Victoria Jones indicated that she had reviewed the situation but that the role was not a suitable redeployment opportunity. She did however offer the claimant the opportunity of providing more information on his working knowledge of using a particular type of database (Raisers Edge) and said if the claimant sent her information on this, she would include it for consideration. She did not ask for further details relating to the other three essential criteria.
31. The claimant did not provide further information at that stage. His evidence was that he did not feel that this single point would help him, given his zero score. Although he had extensive database experience, he had limited knowledge of this particular database. He was feeling frustrated by this time and wanted an independent review.
32. Victoria Jones' e-mail of 26 February also offered a review of the shortlisting by the next level manager, subject to the claimant's reasons for disputing the original decision. A review took place with Paul Maher, Director of High Value, but this was only a reconsideration of the paper application and resulted in the same outcome.
33. An appeal was conducted by Nikki Pawsey, Director of Supporter Communities and Groups, and included a face-to-face discussion with the claimant on 9 March 2020, where the Claimant was able to set out his experience and skills. Nikki Pawsey's evidence was that she was keen to hear from the claimant so that she could have a complete overview of the situation in order to reach an outcome.
34. Immediately after the meeting Nikki Pawsey contacted Rob Dickinson and Rob Dickinson told her that the post had been filled. It was only after she was aware that there was no longer a vacancy for Relationship Officer that she considered the appeal information and found that the role was not a suitable alternative, thereby upholding the decision to dismiss for reasons of redundancy.
35. Nikki Pawsey's appeal outcome letter dated 13 March 2020 acknowledged that communication with the claimant could have been timelier. It also said that *"I feel that there are learnings around our communication and approach to those placed at risk to be taken from this, and will be taking these forward."* In cross examination she admitted that communication with the claimant could have been better.
36. The Claimant's employment with the respondent terminated on 31 March 2020

Law

37. Section 98 of ERA provides, so far as is relevant:

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-
 - (a) the reason (or, if more than one, the principal reason) for the dismissal and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it:
 - ...
 - (c) is that the employee was redundant
 - ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

38. Fairness was considered in the following way in *Williams v Compair Maxam Limited* [1982] ICR 156 per Browne-Wilkinson J "*the fair conduct of dismissal for redundancy must depend on the circumstances of each case*". "*It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted*"

39. In *J Sainsbury plc v. Hitt* [2003] ICR 111, the Court of Appeal said that, in applying the test of reasonableness, the tribunal must not substitute its own view for that of the employer. It is only where the employer's decision is so unreasonable as to fall outside the range of reasonable responses that the tribunal can interfere.

40. In *O'Brien v Riverside Group Ltd* ET Case No 2404843/11, the employment tribunal upheld a complaint of unfair dismissal for reasons of redundancy where the respondent had failed to offer an interview for an alternative position because the claimant had no previous experience in the type of job on offer. It should have investigated whether the claimant's skills were transferable.

41. In *Ralph Martindale and Co Ltd v Harris* EAT 0166/07, the employment appeal tribunal did not interfere with the employment tribunal's finding that

in the circumstances of that case no reasonable employer would have opened the new post up to candidates other than the two that were at risk.

42. In *Newcastle City Council v Ford and ors* EAT 0358/13, the employment appeal tribunal upheld the employment tribunal's decision that the claimant's dismissal was unfair for reasons of redundancy where she performed poorly at interview for an alternative post. This was because the respondent had not told her that its selection decision would be based entirely on the interview and the council would not take account of its prior knowledge of candidates or of written forms completed. She had therefore been unfairly denied the chance to sell herself for the role at interview.

Conclusions

43. Although the respondent is not a particularly large organisation and redundancies are frequent, it should have offered more support to the claimant. The Organisational Change Policy makes it clear that the organisation will do all that is reasonably practicable to provide at risk staff with access to redeployment opportunities and suitable alternative employment and that employees at risk will have priority status for available posts. The respondent should have done more for the claimant than giving him access to a vacancies portal and it should have given him, and others at risk, priority consideration for available posts. It did not do and did not provide adequate support.
44. With respect to a right to interview, the policy is ambiguous. At paragraph 8.4.2 it provides that at risk employees will be given preferential consideration and departments must interview/consider them before other candidates, provided they meet the essential criteria for shortlisting. However, paragraph 8.4.4 says that the essential criteria assessment process will include a behavioural based interview.
45. Any ambiguity should have been resolved in favour of the at risk employees including the claimant, and it was not unreasonable for him to have expected to be interviewed and given the opportunity to promote himself for the role face-to-face.
46. The respondent should have discussed the potential opportunity of the Relationship Officer role with the claimant, what the essential requirements would be for the job and the claimant's capabilities and suitability for the post. This should have involved an opportunity for the claimant to discuss all relevant experience and skills.
47. If a written application was required, support should have been given on how to go about making that application, how it would be assessed, and what the essential criteria were.
48. Discussions should have taken place with the at risk employees before considering others, and a proper prioritized assessment should have been undertaken. This was crucial because it was a redeployment situation and not just a recruitment process, and there was an obligation on the respondent to do what it reasonably could to consider alternatives.

49. A paper exercise alone was not sufficient in a redeployment situation. Others, such as line managers should have been consulted. This should have fed in to a proper consideration of whether the claimant's skills were transferable and what gaps there might have been. The respondent should have addressed any possibility of training and whether a trial period could reasonably have been offered. Simply because the claimant had no previous experience in the type of job on offer did not mean that he did not have relevant transferable skills. This should have been properly investigated.
50. The mischief was compounded by a lack of clarity over what the process would be. The claimant was never informed that a paper sift was being undertaken and that so much weight would be given to his written application. If he had been told of this, it is likely that he would have approached the paper exercise differently. Although he had been told to submit a full application, he was also told at the time that this was because he was not formally at risk. Once he was at risk, the process should have changed and he should have been given more opportunity to demonstrate his abilities.
51. Furthermore, the essential criteria were not easy to ascertain prior to making the application. They were not contained in the advert and they were scattered throughout the job description and not highlighted in any way. An applicant would not readily know the specific competencies s/he was trying to demonstrate. This was a significant flaw as much depended on these essential criteria being met. They should have been made very clear to the claimant. Telling him about them in an e-mail after the event was not at all reasonable.
52. Whilst Victoria Jones offered the claimant the opportunity to submit more evidence about his knowledge of using a particular type of database before formally reviewing his application, this was a narrow request relating to only one of the four essential criteria. As the claimant had scored zero in the sift, providing that information would have made no difference to the outcome. Therefore, the fact the claimant did not submit anything further to Victoria Roberts at that stage was of little consequence.
53. The review process with Paul Maher only considered the written application and did not take account of anything more. Accordingly, it did not cure the defects in procedure.
54. Whilst the appeal hearing with Nikki Pawsey involved a discussion with the claimant, by that time the post had been filled and consequently the appeal was of no practical effect. The recruitment process should have been paused pending the outcome of the claimant's appeal. Although Nikki Pawsey went on to uphold the decision to dismiss on the grounds of redundancy, her appeal decision was made in the knowledge that the post of Relationship Officer was no longer available.
55. Overall, the respondent did not take appropriate steps to seek to redeploy the claimant. Neither did it follow its own Organisational Change Policy in doing what was reasonably practicable to provide access to suitable alternative employment. It did not offer the claimant an interview and it did

not give him priority to available posts, or preferential consideration over others. The review and appeal processes did not resolve these significant defects.

56. For the above reasons, in the circumstances of this case the dismissal was not within the band of reasonable responses. Therefore, in accordance with equity and the substantial merits of the case, I find that the dismissal was unfair.

Employment Judge Liz Ord

Date: 19 April 2021

JUDGMENT SENT TO THE PARTIES ON

22 April 2021

FOR THE TRIBUNAL OFFICE

Notes

1. The hearing code "V" in the heading to this judgment indicates that the hearing took place on a remote video platform. Neither party objected to the format of the hearing.