EMPLOYMENT TRIBUNALS

Claimant: Mrs C Yildiz-Kurtulus

Respondent: Unilever UK Central Resources Limited

Heard at: London Central (via CVP) **On:** 24th - 26th and 30th March 2021

Before: Employment Judge Nicklin

Representation
Claimant: Mr K Charles (Counsel)
Respondent: Mr D O'Dempsey (Counsel)

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face-to-face hearing because of the COVID-19 pandemic.

RESERVED JUDGMENT

1. The Claimant's application to amend the claim to plead that she was dismissed by reason of redundancy on the basis of a constructive dismissal (pursuant to section 136(1)(c) of the Employment Rights Act 1996) is refused.

2. The Claimant's application to amend the claim to plead that she was dismissed by reason of redundancy when her temporary role expired and was not renewed is granted.

3. It is the judgment of the tribunal that the Claimant was not dismissed by the Respondent.

4. The Claimant is therefore not entitled to a statutory redundancy payment under section 135(1)(a) of the Employment Rights Act 1996.

5. The claim is dismissed.

REASONS

Introduction

1. By a claim form presented on 9th July 2020, the Claimant brought a claim for a statutory redundancy payment pursuant to sections 135(1)(a) and 163(1) of the Employment Rights Act 1996 ("the ERA").

2. The Claimant explicitly stated in her grounds of complaint that she does not make a claim before the tribunal in respect of any contractual redundancy entitlement, bonus and shares. It was agreed between the parties at the hearing that the tribunal is only to consider whether the Claimant is entitled to a statutory redundancy payment.

3. The Claimant was initially employed from 7th June 2004 by a Turkish subsidiary of the Unilever Group, Unilever Sanayi ve Ticaret Turk A.S ("Unilever Sanayi") before later transferring to the Respondent, a UK subsidiary of the Unilever Group. The details of this transfer and the Claimant's roles, so far as relevant, are set out in my findings of fact below.

4. The Claimant's employment with the Respondent terminated on 15th February 2020. The Claimant contends that she was dismissed by reason of redundancy, there was no offer or no suitable offer of alternative employment and she therefore says she is entitled to the statutory payment. The Respondent denies that the Claimant was dismissed and contends that the Claimant resigned and the right to a redundancy payment under section 135(1)(a) of the ERA does not therefore arise. If there was a dismissal, the Respondent denies entitlement in any event on the basis that it says there was no redundancy situation at the point of such dismissal and that the Claimant unreasonably refused an offer of suitable alternative employment.

5. The Claimant attended the hearing and gave sworn evidence on the second and third day of the hearing. She was represented by Mr Charles of counsel who provided written submissions on the final day of the hearing. The Respondent was represented by Mr O'Dempsey of counsel who called Mrs Abbey Sullivan (Vice President, Innovation Transformation and previously the Claimant's line manager) and Mr Richard Hazell (PLC Deputy Secretary and Corporate Counsel who considered and determined the Claimant's grievance in 2020). Both witnesses gave sworn evidence on the third and fourth days of the hearing respectively. Mr O'Dempsey also provided written submissions on the final day of the hearing, including a short written reply to the Claimant's written submissions.

6. I was provided with a 316-page joint bundle of documents and witness statements for each of the three witnesses. Subsequent to the Claimant's amendment application on the first day of the hearing, I was also provided with supplemental witness statements from the Claimant and Mrs Sullivan and two small supplementary bundles of documents. The first of these was dated 24th March 2021 and runs to 26 pages, the second was dated 25th March 2021 and runs to 31 pages. There was no objection from either party in respect of these supplemental statements or documents being considered by the tribunal.

Claimant's application to amend

7. On the first day of the hearing, after I had commenced a period of reading into the bundle and witness statements, the Claimant made two applications to amend her pleaded claim. An issue arose during the initial discussion of the issues to be determined by the tribunal when counsel for the Claimant indicated that the Claimant wished to argue that the basis of her dismissal by the Respondent for redundancy was to be put under section 136(1)(c), which provides:

> *(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*

8. It was initially contended on behalf of the Claimant that the ET1 claim form and grounds of complaint sufficiently pleaded an argument of constructive dismissal on the basis that it had been advanced that there was a dismissal by reason of redundancy and section 136(1)(c) is one of the statutory bases for such a finding of a dismissal. I decided that the ET1 claim form and the grounds of complaint did not advance this basis of dismissal at all. In particular, there were no pleaded repudiatory breaches of a contract in response to which the Claimant had claimed she had resigned. Accordingly, neither the Respondent nor the tribunal were in a position to be able to identify from the grounds of complaint the circumstances in which it was being said that the Claimant was entitled to terminate the employment contract without notice by reason of the employer's conduct. No facts were pleaded to set up such a case. Further, the grounds of complaint gives the clear impression that the Claimant denied there had been any form of resignation. For example, at paragraph 9, it says:

> The Claimant's employment ended on 15 February 2020. Although the Company claimed this was by reason of resignation it was by reason of redundancy.

9. A secondary question arose during the initial discussions as to the Claimant's intention to also rely on section 136(1)(b), which provides:

> *(b) he is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract*

10. On this point, the Claimant was contending that an alternative basis of the dismissal was that the Claimant's role in 2019 was a temporary role for a fixed period (i.e. a limited term contract) which expired and was not renewed. A factual basis for this was advanced as part of the draft list of issues. Again, the Claimant's ET1 claim form and grounds of complaint did not suggest that the dismissal arose by virtue of the expiry of a limited term contract which was not renewed and the factual basis for this had not been set out before the hearing.

11. The Claimant therefore orally applied to amend the claim to include:

    11.1. A pleading that section 136(1)(c) was the basis of the dismissal (i.e. a constructive dismissal); and
    11.2. A pleading that the Claimant was dismissed by reason of redundancy when her temporary role expired and was not renewed (i.e. a claim based on section 136(1)(b)).

12. I had regard to the whole of the ET1 claim form and grounds of complaint when considering the application, along with the oral submissions of both counsel, supported by the draft list of issues which sought to set out the Claimant's proposed cases under these two statutory bases of dismissal.

13. I also had regard to the guidance in *Cocking v Sandhurst (Stationers) Ltd* [1974] ICR 650 and, importantly, *Selkent Bus Co Ltd v Moore* [1996] ICR 836.

14. I decided to refuse the application to amend the claim to include a pleading of constructive dismissal under section 136(1)(c) for the following reasons:

    14.1. Whilst it was accepted that this was not a new cause of action, it does advance the argument of dismissal by reason of redundancy in a completely new way and one not anticipated before the first day of the hearing. Such an argument is of an altogether different character to an allegation that the Claimant was actively dismissed by the Respondent.

        14.1.1. **The nature of the amendment:** To advance this new argument, the Claimant was seeking to say that she resigned in response to a repudiatory breach of contract committed by the Respondent.

        14.1.2. The draft list of issues proposed that the breach of contract was the Respondent's refusal to treat the end of the temporary role as a redundancy, thereby refusing to pay the redundancy payment. This was said to be a breach of an agreement formed in 2018 that the Respondent would delay the 2018 redundancy while the Claimant undertook a temporary fixed term role. The Claimant therefore alleged that the Respondent had gone back on a promise and the Claimant wished to plead that she effectively resigned in response to this on 13th December 2019, upon learning of the Respondent's decision. It was not made clear in the application, but taking it at its highest, I understood that this was to be put as a repudiatory or fundamental breach of the contract in the circumstances.

        14.1.3. There was limited information in the form of a pleading on which to fully identify the basis of this formulation of the claim on the first day of the final hearing (listed at this point for three days). In particular, it was not particularly clear what was being put as the event in response to which the Claimant had resigned. The draft list of issues referred to the Claimant's email to the Respondent of 4th December 2019 explaining that, in that email, she accepted redundancy and would leave, but the narrative also suggested the resignation was on 13th December 2019.

        14.1.4. **The applicability of time limits:** this was not an issue of concern because the application turned on the formulation of the claim and the basis on which a dismissal was being argued. It did not introduce a new cause of action.

        14.1.5. **The timing and manner of the application:** this was a critical issue in the circumstances of this case. There was no good reason for not making this application in advance of the first day of the final hearing.

            14.1.5.1. I realised that the Claimant or those representing her had not considered that this argument was not clear on the face of the pleaded grounds of complaint, but, on any objective reading of the claim, there is no breach of contract being alleged on which it is said the Claimant has resigned in response to such

conduct. The Claimant has been professionally represented throughout and could have set this out in the initial pleading or made an application well before the final hearing, with properly amended grounds of complaint.

14.1.5.2. For a claim to proceed under section 136(1)(c), the Claimant must be entitled to terminate the contract without notice because of the Respondent's conduct. There was no good reason advanced as to why the Claimant could not have set out the basis of such a claim. This claim was presented on 9th July 2020 and the parties had notice of the hearing on 1st October 2020. The Respondent had been taken by surprise as a result of the application and the substance of the argument.

14.1.5.3. I had regard to the overriding objective, which includes dealing with the case fairly and justly so far as is practicable and ensuring the parties are on an equal footing in circumstances where a new argument was being raised.

14.1.5.4. The Respondent submitted that it may have arguments in response to this new pleading which would need to be considered. In particular, these issues by way of response were said to likely be waiver or affirmation. Such arguments are common factual and legal matters to be considered in a constructive dismissal case.

14.1.5.5. I had regard to the relative hardship to the parties of allowing or not allowing the amendment. I decided that, if I allowed the amendment, it was very likely that I would have to adjourn the three-day final hearing to enable the Respondent to adequately respond to the argument, gather further evidence or disclosure and, if necessary, call any witnesses. Such an adjournment would cause very significant expense to both parties which was not in accordance with the overriding objective in this case.

14.1.5.6. Further the delay caused by this would mean that the witnesses, present and in attendance at this hearing, would have to be sent away and asked to come back on some future occasion later in the year, when memories are further strained by the passage of time. Allowing this delay would not, in my judgment, be a proportionate way to deal with this case relative to the complexity and importance of the issues. This is a claim brought solely for a statutory redundancy payment in circumstances where other claims have been reserved for a different jurisdiction.

14.1.5.7. I considered the hardship on the Claimant in not being able to argue a section 136(1)(c) dismissal. However, this was an argument which had not been advanced or argued at all before the final hearing. It did not appear to be advanced in the Claimant's witness statement. The Claimant still had a claim for a statutory redundancy payment which was ready to be heard at the final hearing. She was able to pursue that claim without any further delay to either party. The Respondent had responded to and prepared for the claim as pleaded.

15. I decided to allow the Claimant's application to amend her claim to plead that the Claimant was dismissed by reason of redundancy when her temporary role

expired and was not renewed (i.e. a claim based on section 136(1)(b)). This was because:

15.1. **The nature of the amendment:** This argument concerns the Claimant's claim as to the mechanism of dismissal. This is of an entirely different character to the application concerning constructive dismissal because it would not make a radical departure from the pleaded claim in the way that a constructive dismissal argument would. Her pleaded case is that there was a dismissal for redundancy; an active dismissal by the Respondent. This application sought to add to the pleaded claim a new way of arguing the mechanism of an active dismissal by the Respondent, supported by a new factual allegation: that there was an agreement between the parties, instigated by the Respondent, that whilst the Claimant's contract would expire on 31st December 2019, she would remain in the temporary role until 15th February 2020. At that point, it was not renewed so, the Claimant says, it amounted to a dismissal.

15.2. In my judgment, this was being advanced for the first time at the hearing because it was not clear on the pleadings that this was being put as a mechanism for dismissal.

15.3. **Time limits:** It was agreed that this was not a new cause of action and, as such, there was no time limit issue arising. The Claimant relies on an alleged expiry of a fixed term contract at the point when her employment came to an end.

15.4. **The timing and manner of the application:** The Claimant contended that the draft list of issues on this point offered further particulars. It was said not to be a significant alteration and did not place the Respondent at any material disadvantage. The Respondent contended that this was a new allegation and it was not aware of the argument. There may be new witness evidence required and, it was submitted, the late application was not in accordance with the overriding objective.

15.5. In my judgment, whilst this was a late application, the question of whether the Claimant's contract was (or was not) a fixed or limited term contract could be dealt with in the evidence and submissions at this hearing. There was a far greater hardship on the Claimant by not being able to put the dismissal in this way than there would be on the Respondent by allowing the amendment. The factual issues the Claimant relied on for this argument concerned the Claimant and Mrs Sullivan, who was the Respondent's witness. Both attended the hearing in order to give oral evidence and both could be cross examined on the point. There was scope for me to enable both parties to deal with the factual allegation and the legal argument as to whether there was a fixed term contract which expired, within the timetable of the hearing. If it became necessary for any further disclosure on the point during the following two days, time could be allowed for that. The Respondent's counsel was already alive to the question of whether this argument could amount to a dismissal in law. There was scope for this to be argued and considered.

15.6. The Respondent may suffer some hardship from dealing with the new argument, but the factual allegation was relatively narrow, the witnesses were present and time could be made available. As such, in my judgment, this mitigated any hardship on the Respondent and meant that

I could manage the hearing in accordance with the overriding objective (particularly in ensuring the parties were on an equal footing) if the amendment were allowed.

15.7. Balancing these hardship factors, in my judgment, it was therefore in accordance with the overriding objective to allow the amendment so as to enable the Claimant to advance her case on the mechanism for dismissal.

Issues

16. Following the determination of the Claimant's applications to amend, counsel provided me with an updated, agreed list of issues on the morning of the second day of the hearing. The issues I must determine were agreed as follows:

1. Did C resign or was there a dismissal under section 136(1) (a) or (b) on 15 February 2020?

1.1. Was there a section 136(1) (a) or (b) dismissal in circumstances where:

- *C's Global Director role was redundant in 2018 but the parties had agreed to delay that redundancy to look for suitable permanent employment for C whilst she carried out a temp role for a fixed period; and*
- *When that fixed period temp role expired and there was no suitable permanent employment.*

C's amended pleading is that there was an active dismissal by R, when the temporary role that she was doing expired and was not renewed (see judgment of 24 March 2021).
C puts this on the following basis which forms the basis of her pleading on the issue:
"C says that she spoke to Abbey Sullivan in December 2019, after her email of 4 December, stating that she believed her role would expire on 31 December 2019 and that would be her last day of employment. She was told that she would need to stay because it was too short notice and the Claimant agreed with Ms Sullivan that she would stay over in the temp role and do a handover, then her employment would terminate on 15 February 2020. This was the date when the temp role expired."
R says (a) C resigned; (b) R held her to her notice under the contract but that notice was varied; and (c) for the purposes of section 136(1)(b) the contract did not come to an end by virtue of the expiry of a limited term contract but by virtue of C's resignation.

1.2. In the case of any alleged 136(1)(b) termination, did that constitute a dismissal or was it a termination by mutual agreement?

2. If there was a dismissal on 15 February 2020 was there a redundancy situation at that point in time?

C says there was a redundancy situation as at 15 February 2020. She says that her substantive role of Global Brand Director was redundant in 2018, but that the parties agreed to delay the redundancy whilst she carried out a temporary role and while the parties looked for a perm suitable alternative. No such alternative was found or offered and therefore, there was a redundancy situation when she was dismissed on 15 Feb 2020.
R says it is not possible for the parties to confer jurisdiction on the tribunal in respect of a statutory redundancy payment in this way due to the effect of sections 138(1)(a), 138(2) and s138(3)(b)(ii), 138(6) and 141(1). C freely accepted a new job, and the question for the tribunal is whether C was redundant in relation to that job as at the time of the termination of her

employment by virtue of her resignation. The comparison is with the job she was actually doing.

3. *If so was the dismissal "by reason of redundancy" or by reason of some other cause?*

4. *If there was a redundancy situation when C was dismissed and the dismissal was by reason of redundancy, did R make an 'offer' of suitable alternative employment to C?*

   R says that there were repeated offers to C before and after her resignation.

5. *If so, did C unreasonably refuse suitable alternative employment?*
   - *(a) is C entitled to compare the job she was allegedly 'offered' with the job she had been doing prior to the end of 2018 or must C compare the job she was 'offered' in 2019 to the temporary job she had been doing from January 2019?*
   - *(b) on either account was the job offered in 2019 a suitable alternative employment.*

6. *Is C entitled to a statutory redundancy payment?*

17. During oral submissions at the end of the hearing, both counsel confirmed that the calculation of a statutory redundancy payment was agreed, subject to the question of entitlement above, on the basis of 15 years complete service from 7 June 2004 until 15 February 2020.

Findings of Fact

18. Given the statutory basis of the claim, I do not make findings about any alleged contractual entitlements which might arise in this dispute and/or whether there was any agreement for such entitlements under any contract of employment or otherwise.

19. I make the following findings of fact.

The Respondent's organisation and the Claimant's roles

20. The Respondent is a UK subsidiary of the global Unilever Group which develops and sells a wide range of well-known products for consumer use. The Group is based on three core divisions: Beauty and Personal Care, Foods and Refreshments and Home Care. Each division has a number of categories. Home Care, for example, has three: Laundry, Home and Hygiene and Water. A central marketing function, known as the Chief Marketing and Communications Office ("CMCO") supports all three divisions. The CMCO includes a team called the Innovation Transformation team.

21. The Claimant is a Turkish national and started her employment in Turkey with Unilever Sanayi from 7th June 2004. She moved to work in the UK on an International Assignment ("IA") with effect from 1 November 2016, initially to be for a period of three years. The effect of this move, as is confirmed in a letter to the Claimant dated 7th November 2016 (p.313-6 of the joint bundle), was to suspend the Claimant's contract of employment in Turkey so she could enter into a new contract of employment with the Respondent for the duration of the IA.

22. The Claimant's role under the IA with the Respondent was 'Category Strategy Director – Home Care' with her continuity of employment being preserved from 7th June 2004. The role was also known as a 'Global Brand Director' (p.262 of the joint bundle). This role was banded as a 'WL3' role, being director level

within a band range of WL1 (non-managerial) to WL6 (Unilever Leadership Executive). The contract of employment (p.33-40 of the joint bundle) confirms that there was a 3 month notice period for either party and the Claimant's base salary began at £126,499 per annum with other benefits such as a bonus scheme.

23. In 2018, a restructure took place across the Unilever Group. On 1st October 2018, the Claimant was given written notice that her IA was being terminated and her employment with Unilever Sanayi would end on 30th November 2018 with a payment in lieu of notice. This notice was later amended to a termination date of 31 December 2018. There is no dispute that this was a redundancy situation at that time and a redundancy 'package' was identified. I do not need to make findings about the terms and details of this 'package' because it is beyond the scope of a statutory redundancy payment and the issues I must determine.

24. Following notice having been given to the Claimant on 1st October 2018, a temporary role was identified: Innovation Transformation Project Director ("the ITPD role"), with the Respondent. This was in the team led by Mrs Sullivan, part of the CMCO, and arose from a project called 'Innoflex' which involved a new governance process for innovation. The ITPD role was formally offered by letter of 18th December 2018 by Tanvi Shah, HR Business Partner – Home Care, as a WL3X role for a temporary period until 30th June 2019. This was offered as an alternative to redundancy at that stage and the Claimant had a choice whether to accept the redundancy package from Unilever Sanayi or to move into the new role until June 2019.

25. The ITPD role was therefore only intended to be temporary with a view to another role being identified at the end of the project, if possible. Anu Razdan (HR – Home Care) confirmed this in an email to the Claimant dated 20 December 2018 (p.52 in the joint bundle) where he said:

> "*Our hope will be to find you another suitable role at the end of this project role and therefore there we hope there will not be the need to make you redundant*...(sic)"

26. Igora Drabova, People Experience Lead, Unilever HR Services UK, wrote to the Claimant on 1st January 2019 confirming that the project was expected to be completed by 30th June 2019 and there would no longer be a need for the role after that point. Her letter continued:

> As you are aware the Innovation Transformation project is expected to be completed by 30th June 2019 at which point there will no longer be a need for the role of Innovation Transformation Project Director. We will of course work with you to find an alternative role for you to take up when this temporary opportunity comes to an end. However, I need to make you aware that if no alternative role is available, your employment with the Company will come to an end on 30th June 2019. You will be paid the discretionary redundancy lump sum which was communicated to you in email by Cesy Seritcioglu on 4 December 2018 of £66, 504GBP and confirmed in the letter from Tanvi Shah, HR BP dated 18th December 2018. This payment would include any statutory amount to which you would be entitled under the terms of the Employment Rights Act 1996. Redundancy payments up to £30,000 will be paid tax free, thereafter the standard tax treatment in the UK applies.

27. The Claimant accepted this role with effect from 1st January 2019 initially by signing her confirmation to Tanvi Shah's letter on 21st December 2018 (p.236 of the joint bundle). She entered into a new contract of employment, the terms of which were accepted by the Claimant on 8 January 2019 (along with an acknowledgement of the letter from Ms Drabova). The salary for the role was £139,861.19 plus benefits. The ITPD role is not stated to be for a fixed term in the employment contract and included the 3-month notice period to either party, as before.

28. The ITPD role was a project role. Both the Claimant and Mrs Sullivan expected the Claimant to move, in time, into another post. The ITPD role was not a 'destination role' for the Claimant. Mrs Sullivan accepted, in her oral evidence, that the Claimant's long term goal was to move into a marketing role in a division and the Claimant accepted that Mrs Sullivan was supportive of the idea of her moving into a division at some point.

29. However, I find that the Claimant was happy to enter into the ITPD role and content with her new employment contract, effective from 1st January 2019, because:

    29.1. The Claimant signed to confirm her acceptance of the terms in Tanvi Shah's letter dated 18th December 2018 on 21st December 2018 and signed the terms and conditions of the employment contract on 8th January 2019. In her evidence, the Claimant contended that she had very limited time to consider the letter of 18th December as she was on holiday at the time. She said she did not have time to check it properly. Whilst the Claimant was not impressed with the process to which she had been subject, I do not accept that the Claimant was unclear about the contract into which she entered. She signed the written contract on 8th January 2019 which plainly sets out the terms, at which point she was no longer on holiday and had had time to digest any previous communications and the written contract.

    29.2. The Claimant is an intelligent and successful business person who was more than able to understand the terms and conditions of the employment being offered to her. Whilst she remarked in her oral evidence that she is not a lawyer, I find that the terms and conditions set out were not such that the Claimant required legal advice in order to understand them.

    29.3. Further, the Claimant did want to work on the project with Mrs Sullivan, in circumstances where her previous marketing role had ceased. In an email to Ulku Akalin, copying in Anu Razdan and Tanvi Shah, on 21st December 2018 (at page 170 of the joint bundle), the Claimant raised her concerns about the drop in income by taking the ITPD role, but explained:

> and I don't want to fail the trust of people like Aline or Abbey who have waited for me almost 2,5 months to arrive and take on this role; they are the biggest reasons for me to accept this offer at this stage and trusting that both HC HR and you will be doing your best to find me another role after this job not to re-open the same process again.

30. The Claimant then settled into the ITPD role without issue. She did not take any immediate steps to resign from the role having started it and, whilst the role was not the same as her previous marketing director post on the IA, she confirmed in evidence that she did not require any retraining in order to carry out her duties.

The extension to the Claimant's IPTD role

31. Innoflex was working well for the Respondent as a new form of governance. The workload for the project therefore increased and Mrs Sullivan asked the Claimant if she would be happy to stay in the role if it were extended for 6 months. The Claimant was happy to do this.

32. On 11th February 2019, the Claimant emailed Anu Razdan (at page 84 of the joint bundle), telling him:

> *"My project is going well and it was really a good come back / landing for myself as well; team seems to be happy too. Abbey asked me the possibility of extending my project for another 6 months. I am happy to extend since I really liked working with them and project is really exciting too; however didn't know if it would create any unknown / unexpected surprises…"*

33. The Claimant's concern was to see that a redundancy 'package' would be reserved for her if she remained in the ITPD role until the end of December 2019. This was confirmed in an email reply from Anu Razdan on 13th February 2019.

34. On 15th May 2019, Mrs Sullivan wrote to the Claimant explaining:

> **Hello Cigdem,**
> **We would love to offer you an extension of your contract with us for another 6 months – to the end of 2019. Homecare have confirmed that they can hold your redundancy provision until then (i.e. until the end of 2019).**
> **Please let us know if you would like to accept! And then, Lakshmi please let us know what we need to do to put this in to effect**
> **Thanks**
> **Abbey**

35. The Claimant replied on the same day:

> **Hi Abbey,**
> **Thank you so much for your email and this offer.**
>
> **It is an absolute pleasure to be working for Unicorn and with the innovation team, hence yes- I would love to extend my contract too.**
>
> **Warmest regards**
> **Cigdem**

36. Lakshmi Menon, People Experience Lead, wrote to the Claimant on 27th May 2019 (page 93 of the joint bundle) confirming the extension to her role to 31st December 2019:

> Following an instruction from your line manager, I write to confirm the extension of your temporary move to the position of Innovation Transformation Project Director.
>
> This move is on a temporary basis to continue the work on the Innovation Tranformation project. As agreed with your line manager, this project role has been extended from the originally communicated end date of 30th June 2019 and is now expected to last until 31st December 2019.
>
> As you are aware, your role of Global Brand Director DiG Ultimate & Matics, has been made redundant as confirmed via the Notice Letter that you received on 1st October 2018, therefore it will not be available for you to return to. We will of course work with you to find an alternative role for you to take up when this temporary opportunity comes to an end. However, I need to make you aware that if no alternative role is available your employment with the company will come to an end on 31st December 2019 due to redundancy on the terms communicated to you in an email from Cesy Seritcioglu on 4 December 2018 and confirmed in the letter from Tanvi Shah, HR BP dated 18th December 2018.

The new WL3 permanent role

37. Following the resignation of another employee in or around September 2019, Mrs Sullivan decided to use the opportunity to create a WL3 permanent role in her team, which would be an evolution of the ITPD post being performed by the Claimant. Mrs Sullivan immediately had the Claimant in mind for this post.

38. On 3rd September 2019, the Claimant emailed Mrs Sullivan (at page 95 of the joint bundle) advising her that, having recently seen the HR Vice President from Turkey, she had informed her that she was not planning to return to Turkey and that she 'loved' the project she was doing.

39. On 19th September 2019, Mrs Sullivan then emailed Aline Santos (her line manager) and Jille Tabak (HR Vice President) about her proposal to 'rescope' the WL2C Innovation Process Manager role (being vacated) as a WL3 Innovation Transformation Director role. Her objective of doing this was to bring in senior experience whilst remaining 'headcount neutral'.

40. The response on 24th September 2019 from Aline Santos (page 98 of the joint bundle) was whether they could hire the Claimant to fill this role. Mrs Sullivan's comments in reply to this question was that she would be happy for her to apply for the post, but she was not sure that it would be the Claimant's first choice as "*she wants to move into a Division before too long*".

41. Mr Tabak approved Mrs Sullivan's request on 25th September 2019 by email, directing that that job specification will need to make clear that the post will only be offered on local terms. I accept Mrs Sullivan's evidence that local terms means, in the context of this case, pay based on the UK salary model at Unilever. She described this as not being on 'expat' pay. This accords with the structure of the global business having local subsidiaries in different countries, where employees agree to the terms and conditions of employment local to the country in which they work.

42. Mrs Sullivan communicated this new opportunity to the Claimant through a series of messages on 26th September 2019 (at page 102 of the joint bundle) as follows:

> ***Sullivan, Abbey 13:48:***
> *hello*
> ***Yildiz, Cigdem 13:54:***
> *hi Abbey*
> ***Sullivan, Abbey 13:57:***
> *i have one problme sorted:)*
> ***Sullivan, Abbey 13:57:***
> *have removed the 31st dec deadline...*
> ***Sullivan, Abbey 13:57:***
> *I have approval to open a WL3 position. So if you would like to apply for it that would buy you more time*
> ***Sullivan, Abbey 13:58:***
> *and when you find a new better role, you have my full support, as long as you help me find a replacement!*
> ***Sullivan, Abbey 13:58:***
> *what do you think?*
> ***Yildiz, Cigdem 13:58:***
> *Ahh; that's great news! and such a relief in life!*
> ***Yildiz, Cigdem 13:58:***
> *Thank you so much!*
> ***Sullivan, Abbey 13:58:***
> *cool:)*
> ***Sullivan, Abbey 13:59:***
> *i've asked if I actually have to put it on OJP...or if i can just offer your the role. waiting for jille to reply. BUt I'm hoping sense will prevail and they're not going to make me go through rounds of interview*
> ***Yildiz, Cigdem 14:01:***
> *:))) I can understand those procedures; happy to have an interview with you if you want to :)*

43. As is clear from the messages, the Claimant was content to interview for the new WL3 role as it would likely have to be formally advertised. I find that Mrs Sullivan, in light of what she said to the Claimant in these messages, intended for the Claimant to be placed in the role until the Claimant found another post of her own preference. That is what she meant by saying "*when you find a new better role, you have my full support* (sic)".

44. Mrs Sullivan was bringing news to the Claimant in these messages that she had "*removed the 31st dec deadline*". That means Mrs Sullivan had ensured a new position was available to the Claimant so that her existing project function did not come to an end at the close of the year, as had been expected when the ITPD role was extended. I find this because:

    44.1. There is no other explanation or reason for Mrs Sullivan to refer to a 31st December deadline in these messages.

    44.2. I accept Mrs Sullivan's oral evidence that she did have the Claimant in mind for the new WL3 role when creating it, on the footing that she would look to move on at some point because of the Claimant's aspirations to move to a Division. I found Mrs Sullivan's evidence to be clear and credible. Her oral evidence was unguarded and open. I found

her to be doing her best to assist the tribunal in giving straight forward answers to the questions put to her.

44.3. Mrs Sullivan sent the Claimant a draft job description for the new WL3 role on 21 October 2019. The post needed to be advertised on the Respondent's Open Job Posting board ("OJP"), but, nevertheless, Mrs Sullivan described it as "*your role*".

44.4. The Claimant accepted in her oral evidence that Mrs Sullivan wanted her to have the new role.

45. The new WL3 role was created and tailored for the Claimant (notwithstanding her longer term aspirations). It was a suitable role for her to move into as the ITPD role came to an end. I find this because:

45.1. On 24th October 2019, the Claimant proposed amendments to the job description and emailed these to Mrs Sullivan. These amendments included describing the post as 'Agile Innovation Transformation Director' and adding to the list of descriptors about the role. This included adding: "*Experience & Expertise in Agile (Agile Innovation) is a bonus*".

45.2. The addition of the term 'Agile' to the name of the new role on the job description was a deliberate step, taken by the Claimant, to increase the expertise and seniority of the role in line with her own experience and skill set and to make it appear a more permanent role (something which Mrs Sullivan had wanted to achieve to ensure HR did not change its mind about the position). I accept Mrs Sullivan's evidence that the role better suited the Claimant by including the term Agile as the Claimant was experienced in this area.

45.3. Whilst Mrs Sullivan was required to post the new WL3 role on OJP, it was specified that there was a 'preferred candidate' and this was the Claimant. The role was posted on 7th November 2019 on this basis and the Claimant accepted in her oral evidence that she knew she was Mrs Sullivan's 'preferred candidate'.

45.4. The new WL3 role was an evolution of the ITPD role being performed by the Claimant. I accept Mrs Sullivan's evidence that the role reflected the fact that there was business approval to scale up the innovation programme and roll it out. That accords with the terms of the draft job description. Further, in an email from the Claimant to Lakshmi Menon (HR) on 14 November 2019 (at page 158 of the joint bundle), the Claimant described the new role (for which, by that stage, she had applied through OJP) as "*it's the job I'm already doing; but a newly formed up role within CMCO*".

45.5. At the time when it was been created with the Claimant in mind, Mrs Sullivan had not incorporated an IT systems element to the role, which was known to be outside the Claimant's skills and experience. The Claimant accepted in her evidence that the IT systems aspect of the role would not operate until after she had moved on to another post. It was not until 16th December 2019, at a point when it was clear that the Claimant would not be taking the new role, that, as a result of a WL2C

manager skilled in IT systems having announced her pregnancy, that Mrs Sullivan rescoped the new role to add in a systems function (as recorded in an email from Mrs Sullivan to Jille Tabak explaining she had rewritten the job description – supplementary bundle 25.3, page 6).

46. In an email from Mrs Sullivan to Lakshmi Menon dated 15th November 2019, Mrs Sullivan made clear the plan as regards the new WL3 role:

> Hello Lakshmi
> Yes we extended her contract until the 31st December 2019, and HC agreed to hold her redundancy provision until that date
> However, the update since then, is that since Nagisa has left the team, I requested that we reopen a WL3 role in the team, which we would offer to Cigdem permanently. She would accept and therefore forgo her redundancy,
> It is currently on OJP (at Jille' s request, in the spirit of transparency), with a clear mention that there is a preferred candidate.
> Next steps is for her to apply. I don't know if there have been any other candidates. I have had a few phone calls from people, but again been clear about the preferred candidate so I doubt they will apply
> Hope that's all clear? Abbey

47. This email was forwarded to the Claimant by Mrs Sullivan remarking on HR's oversight as to the extension to her current role (settled back in May). The Claimant was therefore aware, from this email, that it was Mrs Sullivan's continuing intention to offer her the new post.

48. The Claimant knew that the new WL3 role was to be offered on local terms and understood what that meant. This was set out on the job description to which she made amendments and no adjustment was proposed to those terms. The Claimant had not been told an exact salary figure but understood the banding for a WL3 role with the Respondent and did not challenge Mrs Sullivan, or anyone else, alleging she did not know what local terms with the Respondent meant. At that time, she was herself employed by the Respondent in the ITPD role, on local terms.

49. The Claimant duly applied for the new WL3 role but was not interviewed (although, as confirmed in the messages on 26th September, she would have been happy to have attended an interview, if required).

50. Mrs Sullivan spoke to a small number of other candidates, advising she had a preferred candidate. I accept Mrs Sullivan's evidence that, at the close of the OJP process in November 2019, she was going to formally offer the role to the Claimant. She emailed Jille Tabak and Jill Clarke on 25th November 2019 (at page 109 of the joint bundle) asking them:

> *Please could you advise what steps I need to put in place to offer the WL3 Innovation Director Roel to Cigdem before the end of the year?*
> *As requested, I posted the role on OJP for a few weeks, and got 4 applicants, including Cigdem. The other three are all currently WL2Cs, and therefore less suited to the role (that Cigdem is already doing anyway).*
> *I have agreed with Juliana that I will speak to them all individually, and continue to be transparent about the fact that there is a preferred candidate. I am interested in meeting them anyway as they might be good candidates for innovation roles within the categories. However I know we will offer the role to Cigdem, as we had agreed, so in parallel, I would like to get things moving to offer it to her formally. And asap, as her current contract runs out on the 31st December. What do I need to do?*
> *Thanks*
> *Abbey*

51. The response from Jill Clarke on the same date made clear this was straightforward to deal with as they were "*just making her perm into the role she is already in*". Lakshmi Menon was directed to assist with bringing this into effect.

52. I accept Mrs Sullivan's evidence that she had assured the Claimant that the role was hers and Mrs Sullivan believed that the Claimant would accept it. That is entirely consistent with her actions in emailing HR on 25th November 2019 (as above) to make the formal offer and complete the process.

The Claimant's 4th December 2019 email

53. On 4th December 2019 at 10.53am, the Claimant sent an email to Mrs Sullivan with the subject headed: 'Decision to Leave'. It said:

> *Hi Abbey,*
> *Hope you are well in India and the team is treating you well.*
> *I wanted to have a chat with you before this e-mail but timing didn't help unfortunately since you're in India and I couldn't reach you via whats app; yet can't live with this anymore hence wanted to send you an email at least; so that we could chat anytime you want.*
>
> *After a lot of debates with myself for the last month; I thought it would be better to leave Unilever rather than stay before my redundancy deadline. As you can imagine, it was such a hard decision for me after 16 years at the same company; hence my bonding is beyond rational now... This decision has nothing to do with you or the great team I was working; on contrary I think this team was the best thing happened to me last year; especially with an insured sole. I really love you and all of this team and wish our paths had been crossed earlier, before I was hurt so badly.*
>
> *The main cause of this decision is a continuous unhappiness as a result of worry about my career progression at UL, especially after what happened in HC last year. Although I survived somehow, still staying in the same company – witnessing all of my friends ' leave for a reason we had been told as 'restructuring, closing down all the positions' and then also witnessing same team opening again the same positions after 2 months and placing a lot of new people at the same positions made me lose my trust to talent management in this company and I am not keen to stay to witness the same things over and over in the following years too…*
>
> *I would like to stay focused on my master in Oxford in February and then start looking for a new job externally and hopefully I can end up somewhere where I would feel valued more as a talent; it's my only wish really.*
>
> *I already have two candidate suggestions for the position you're planning to open next year with two different backgrounds / skill sets and both of them would be doing an amazing job I'm sure. (Hakan Yurdakul and Ranald Lumsden) Beyond that, I am more than happy to support you & team as much as I can till I leave.*
>
> *I will leave the rest to our chat hopefully, you're one of the last persons on this earth that I want to hurt; hopefully you can help me to progress with this hard decision I had made in life which was not easy at all; it will really help me to have a fresh start next year rather than a continuous unhappiness and feeling of unfairness which doesn't help me mentally at all.*
>
> *Best regards,*
>
> *Cigdem*

54. Shortly thereafter, at 11.13am, the Claimant sent the following email to BP Biddappa and Tanvi Shah (HR Partners, Home Care):

As you know, I have been working at CMCO with a secondment project role since January; which first started as a project role with a 6 month contract and then the project was extended for another 6 months and I accepted to stay as well.

However my hard deadline of December to make a permanent decision to either stay or leave Unilever is at the door; which forced me to have an honest debate with myself for a while and finally I decided to leave. As you can imagine, it's not a very easy decision for me since I've been working at Unilever for the last 16 years; although I went through a very difficult period with HC team almost 18 months ago now; my love for this company is continuous and was privileged to work with amazing CMCO team last year as well on a very exciting project. Main reason behind this decision is my acceptance to a master programme at Oxford University next year and I would like to focus more on this at least at hard start in February and after February I am keen to look for an external job where I would feel valued again; yet I need to first liberate myself to focus on the future with a fresh eye.

Another reason behind this decision is my loss of trust for talent management at Unilever due to recent big HC restructure and my increasing worry about my future due to this experience.. . Having worked in HC so many years; I went through several restructures yet the last one was still the most radical / unexplainable one for me. We were announced as almost 8 directors that positions were being closed hence we had to witness all of my friend's leave (including myself) which created a big stress around the team and we were all told in person that it was nothing to do with our performances, it was due to cut in all global positions last year. However, the same people started opening all the positions again only 2 months after and there might be even more positions currently than 12 months ago within HC... Business wise, it is definitely the right decision to put back all of the global positions and I am glad that the decision to reverse was taken, yet almost 8 people lost their jobs in this restructure and I still don't find it fair / explainable in terms of a talent management process. My respect & love for HC business & people is continuous; hopefully last year could be a good learning process to all HC management and HR teams as well. I am not writing this as a critic at all; past is past... But hopefully all of the pain & suffer of all those 8 people will at least help us all to get some learnings for the future.

Hence, I accept the redundancy offer that was ensured me last year (as a fix pack I signed as a letter, the bonus and my pro-rated shares as per promise) and leave Unilever.

I would like to thank you all in advance for all of your support to have a smooth leave from the company I have loved so much for the last 16 years and help me to open a new page after all of this mental stress I went through; I really need a fresh start.

Best regards,

Cigdem

55. She later forwarded the email sent to Mrs Sullivan on 4th December to Jille Tabak and Jill Clarke the same morning at 11.27am (supplementary bundle 24.3, page 4).

56. I make the following findings in relation to the Claimant's two emails:

    56.1. The Claimant sent these emails having made her own personal decision to leave Unilever. Given Mrs Sullivan's intentions in November to finalise the role for the Claimant, the Respondent was expecting the Claimant to accept it, rather than leave.

    56.2. The decision to leave was not made because of Mrs Sullivan or the Innovation Transformation team. The Claimant was complimentary about the team and her time spent working in it.

    56.3. One reason for the Claimant's decision was her unhappiness about her career progression at Unilever. In particular, the Claimant had lost trust in talent management, referring to the redundancy process in 2018, and did not want that to happen again in future. This was cited to Mrs Sullivan as the main reason, but advanced as a secondary reason in the email to HR.

    56.4. The Claimant also wanted the opportunity to commence a Masters degree in Oxford from February 2020 before exploring new external opportunities. The Claimant wanted to be able to focus on this degree course. This was put forward as the main reason for the decision in the email to HR and a secondary reason to Mrs Sullivan. I find on the

balance of probabilities that the Claimant decided to leave for both reasons given the emphasis placed on both reasons in her two emails.

56.5. The Claimant believed that the redundancy 'package' would be available to her upon making this decision. That is clear on the face of the email sent to HR.

56.6. The email sent to Mrs Sullivan was received whilst she was away in India. As at 4th December, the Respondent had not yet had an opportunity to formally offer the new WL3 role to the Claimant. The Claimant had thought about replacements for herself and offered two names in her email to Mrs Sullivan.

56.7. Whilst the Claimant told the tribunal that she considered that she had not resigned from her post, she accepted that she had terminated the contract (albeit in the belief she would receive a redundancy 'package').

57. On 10th December 2019, upon Mrs Sullivan's return from India, she had a telephone conversation with the Claimant about how her team would be resourced after the Claimant had left and how long the Claimant would remain in the team. The Claimant told Mrs Sullivan that she did not want to let the team down and was happy to stay into January and beyond, although no specific dates were discussed. They also discussed other potential candidates for the new WL3 role.

58. This conversation was followed up by an email dated 10th December 2019 from the Claimant to Mrs Sullivan (supplementary bundle 24.3, page 1), where the Claimant said: "*Considering that I will be working in January as well…*" and then set out a proposal to take some holiday and return at the end of December into January. I therefore find that it was agreed on this date that the Claimant was continuing in her current role into 2020. However, I accept Mrs Sullivan's evidence that no fixed dates were agreed. It is clear that neither party confirmed a leaving date in or around December 2019 as it is more likely than not that such a date would have been recorded in an email or letter at the time.

59. A meeting then took place on 13th December 2019 attended by the Claimant, Mrs Sullivan and Jill Clarke of HR. The purpose of the meeting was for the Respondent to explain its position in response to the Claimant's emails, which was that this was a resignation and there was no redundancy or redundancy payment owing. Prior to this meeting, Jille Tabak had attempted to secure a redundancy 'package' or payment for the Claimant in the circumstances of this case. An email from him to Richard Sharp and Susannah Yonge dated 11 December 2019 (supplementary bundle 25.3, page 4) sets this out. However, by 12th December, a firm decision had been made that this was not a redundancy situation, which triggered the need for the meeting to take place. I make the following findings as regards the 13th December meeting:

59.1. Jill Clarke's email of 12th December 2019 (at page 113 of the joint bundle) confirms to Mrs Sullivan (by way of preparation for the points to be addressed in the meeting) that:

59.1.1. The Respondent was shocked by the Claimant's email of 4th December as it had been focused on making her role permanent;

59.1.2. The Respondent had not had any recent discussions with the Claimant about there being a redundancy situation at the end of the ITPD role; and

59.1.3. The Respondent had previously told the Claimant (in its letters concerning the ITPD role) that it would work with her to find an alternative role for the Claimant when the temporary opportunity came to an end. The Respondent considered that it now had a role for the Claimant to move into and she would be offered the role on a permanent basis, meaning there is no redundancy situation and no payment of a redundancy 'package'.

59.2. The Claimant was upset at the meeting. During oral evidence, she confirmed that some of the points set out in this email were put to her but could not remember all of it. I find on the balance of probabilities that these things were put to her in the meeting and it was made clear that the Respondent did not consider any redundancy situation had arisen. I find this because the Claimant agreed that some of the points were put to her and I consider that it is more likely than not that Ms Clarke and Mrs Sullivan used the email of 12th December as the structure of their talking points with the Claimant.

59.3. At the end of the meeting, which was conducted by telephone, the Claimant remained on the line with Mrs Sullivan. The Claimant asked Mrs Sullivan if her email of 4th December counted as her resignation or whether she needed to put it in writing again. Mrs Sullivan asked her if she was sure that she wanted to leave and the Claimant said she did. Whilst the Claimant denied in her oral evidence that she asked this question about her email counting as her resignation, I prefer Mrs Sullivan's evidence because:

59.3.1. I have found, as above, that Mrs Sullivan gave her evidence in an unguarded and straightforward manner. At times, the Claimant gave evidence in way which sought to advance her argument or case and was consequently more guarded in her answers. For example, when it was put to her in cross examination that she was telling the Respondent that she was leaving Unilever in the 4th December email, the Claimant's reply was "*I was accepting the offer of redundancy*". When the question was put again, she replied "*I am noticing them, taking the offer by 31st December*". Despite the email to Mrs Sullivan saying that she was leaving, in clear terms, the Claimant chose to answer these questions from the perspective of the argument in her claim rather than the question asked. In find that her reliability is undermined when considering the conflict in evidence between the two witnesses.

59.3.2. On this occasion, the Claimant suggested that it was a lie to say she had asked Mrs Sullivan about her email being a resignation. However, much of the rest of her evidence had been given in positive terms about Mrs Sullivan and their working relationship. I do not accept that Mrs Sullivan was lying for the reasons given above.

59.3.3. Further, during the time the Claimant and Mrs Sullivan remained on the telephone at the end of the meeting, Mrs Sullivan emailed Jill Clarke (supplementary bundle 24.3, page 4) saying that:

> *On the call just now, after you left, Cigdem told me that her email below is considered her resignation, and that HR have confirmed this. Is this the case? In that case, her resignation is dated the 4th December.*
>
> *Would be good if you could confirm this, or if she needs to write again actually using the words 'resign'.*

It is unlikely that Mrs Sullivan would have asked the final question in this email if the Claimant had not made the request.

60. On 16th December 2019, Mrs Sullivan emailed the Claimant asking if her decision or plans had changed and that, if they had not, she would like to advertise the new WL3 role on OJP in order to fill the position (supplementary bundle 25.3, page 7). The Claimant replied on the same day confirming she was leaving but set out the process by which she wished to challenge the decision about a redundancy 'package'.

61. In the Claimant's email, she also referred to the new role as an "Ipm system & strategic governance role". However, this was incorrect. The new role, as set out in my findings above, was the Agile Innovation Transformation Director role to which the Claimant had had input. I accept Mrs Sullivan's evidence that this was not an IPM system role which, in any event, was an old system being phased out.

62. On 23rd December 2019, the Claimant sent an email to Jill Clarke setting out an argument concerning her perceived entitlement to redundancy on the footing that, in her opinion, there were no suitable alternative roles available (supplementary bundle 24.3, page 10). This, again, referred to her as "*being considered as a preferred candidate for an IPM System & Governance role as a permanent job within Unilever*". This was a misrepresentation of the 'Agile' role with which the Claimant was entirely familiar. I find that the Claimant was recasting the scope of the job to help make her point that it was not a suitable alternative role.

63. Ms Clarke responded substantively to the Claimant on 13th January confirming the Respondent's position, as referred to above. She also confirmed: "*You have subsequently confirmed with Abbey that you do not wish to continue in this role and therefore we have accepted your resignation*".

The arrangements for the Claimant leaving the Respondent's employment

64. The Claimant accepted during oral evidence that the Respondent held her to her 3 month notice period and that this would have expired on 4th March 2020. During this time, the Respondent treated the Claimant as continuing to work out her notice period. Jill Clarke decided this on 12th December 2019 and confirmed it to Mrs Sullivan (at supplementary bundle 24.3, page 2).

65. The Claimant was offered a job, which she later accepted, at Reckitt Benckiser UK & Ireland as Chief Marketing & Digital Officer for UK and Western Europe. She confirmed in oral evidence that she signed the contract for this position in March 2020, but was offered the role before Christmas in December 2019.

66. The Claimant was the decision maker as to when she would finally terminate her employment. This find is because:

66.1. During January, there was still no firm agreement as to the date of termination of the Claimant's employment. Arrangements had not been firmed up and the Claimant was reviewing her options as to when was the most suitable date to leave.

66.2. The Claimant entered into discussions with the Respondent about when her shares would vest and the requirements for her bonus payment with a view to selecting an appropriate date for termination. A meeting followed on 27th January 2020 between Mrs Sullivan and the Claimant. The Claimant was asked if she wanted to extend beyond her notice period to work until 31st March 2020, which would have entitled her to her 2019 bonus. The Claimant was upset by this and declined. The Claimant accepted in her evidence that she told Mrs Sullivan that she was 'point blank refusing' to return to work after the end of January 2020.

66.3. In an email from the Claimant to Lakshmi Menon and Susannah Yonge (both of HR), with others copied in, on 28th January 2020 at 12.19 (supplementary bundle 24.3, page 22), the Claimant asked the following:

> *I had a handover chat with Abbey a few minutes ago; but I wasn't very clear on a few points. Can I understand the responses to below questions to decide on my next steps this week.*
> *1- I understood your P.O.V on bonus (which is a 'no' if I end by 4th of March); but I'm still not clear on shares.*
> *Can I get your response to below questions specifically*
> *- My shares to vest in Feb 14th 2020-- what's the difference between leaving by end Jan and by end February- is it a month difference or losing my whole share?)…*
>
> *…My shares to vest in March 2021 – how would UL treat those shares if I leave this year? Will I be still eligible to pro-rate shares or losing whole shares completely…*
>
> *…Looking forward to hearing from you both today or early tomorrow to decide on my next steps.*

66.4. In response, Ms Yonge replied on 30th January 2020 at 17.26 (supplementary bundle 24.3, page 24) and explained:

> *…Further to Lakshmi's earlier note, I will join the call at 10.30 tomorrow so that we can finalise the answers to any outstanding questions that you have and ensure that we all have clarity on your leaving arrangements…*

66.5. The email and reply demonstrate the factors the Claimant was considering before she came to "decide on my next steps". HR were in a position where they were required to answer the Claimant's questions about matters which best suited her in respect of her leaving.

67. Following further discussions with the Respondent, the Claimant confirmed to Mrs Sullivan in an email dated 5th February 2020 that her end date would be 14th February 2020.

68. The parties agree that the date of termination of employment was 15th February 2020.

The Claimant's view of the new WL3 role

69. The Claimant decided not to remain employed by the Respondent and move into the new WL3 role. She believed that the new role was not a suitable alternative for her, having regard to the original post she had been performing on a higher salary as part of the IA, which was made redundant in 2018. The Claimant believed that the new role would not be using her skills and could, potentially, damage her CV. It is for that reason that she looked for roles outside of Unilever and enrolled on the programme at Oxford.

The Claimant's grievance

70. The Claimant lodged a grievance with the Respondent on 22nd January 2020, with two further grounds being added by email on 13th February 2020. The grievance was investigated by Richard Hazell, who identified the following allegations (as summarised in the outcome letter and confirmed by the Claimant during the process):

1. That the Company should have considered the suitability of the Agile Innovation Transformation Director role in relation to your prior 'permanent' roles/anticipated career path instead of in relation to your temporary Innovation Transformation Project Director role
2. That the Company did not correctly assess the Agile Innovation Transformation Director role as being a suitable redeployment role with respect to all relevant factors
3. That the Agile Innovation Transformation Director role was artificial and only created to retain you; specifically, that (i) it was not required from a business perspective in the long term; (ii) it was incorrectly graded in comparison to similar roles in other divisions
4. That in autumn/winter 2019 the Company should have done more to make you aware of alternative vacancies to the permanent Agile Innovation Transformation Director role you were offered
5. That you were not appropriately informed about the potential implications of accepting the abovementioned temporary role when it was offered in late 2018. In particular that you were not, and should have been, informed that the suitability of alternative roles would not be based on your previous role
6. That the Company, in considering this current grievance, should take into consideration other factors that originally led to you accepting the initial temporary Innovation Transformation Project Director role (such as your previous role being made redundant; time to make a decision; family situation etc.)
7. That, considering all of the above, the Company should have treated the termination of your employment as a redundancy situation

71. By his letter dated 12th May 2020, Mr Hazell did not uphold any of the 7 aspects of the grievance. In particular, he found that the new WL3 permanent role was on the same UK terms and same pay scale, with the same hours and location as the temporary (ITPD) role, notwithstanding that it was an evolution of the role.

72. The Claimant did not appeal the decision.

Law

73. The relevant parts of the Employment Rights Act 1996 ("ERA") which apply to this claim are as follows:

s. 135 The right

(1) An employer shall pay a redundancy payment to any employee of his if the employee-

(a) is dismissed by the employer by reason of redundancy, or

(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.

(2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

s. 136 Circumstances in which an employee is dismissed.

(1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if)—

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

(b) he is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

s.138 No dismissal in cases of renewal of contract or re-engagement.

(1) Where—

(a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and

(b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment, the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.

(2) Subsection (1) does not apply if—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee is employed, and
(ii) the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract, and

(b) during the period specified in subsection (3)—

(i) the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or

(ii) the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.

(3) The period referred to in subsection (2)(b) is the period—

(a) beginning at the end of the employee's employment under the previous contract, and

(b) ending with—

(i) the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or

(ii) such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract;

and is in this Part referred to as the "trial period".

(4) Where subsection (2) applies, for the purposes of this Part—

(a) the employee shall be regarded as dismissed on the date on which his employment under the previous contract (or, if there has been more than one trial period, the original contract) ended, and

(b) the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made.

(5) Subsection (2) does not apply if the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that subsection (1) again applies.

(6) For the purposes of subsection (3)(b)(ii) a period of retraining is agreed in accordance with this subsection only if the agreement—

(a)is made between the employer and the employee or his representative before the employee starts work under the contract as renewed, or the new contract,

(b) is in writing,

(c) specifies the date on which the period of retraining ends, and

(d) specifies the terms and conditions of employment which will apply in the employee's case after the end of that period.

s. 139 Redundancy.

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

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or
(ii) to carry on that business in the place where the employee was so employed, or

(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,

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

s. 141 Renewal of contract or re-engagement.

(1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment—

(a) to renew his contract of employment, or

(b) to re-engage him under a new contract of employment, with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

(2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.

(3) This subsection is satisfied where—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee would be employed, and
(ii) the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.

(4) The employee is not entitled to a redundancy payment if—

(a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,

(b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract,

(c) the employment is suitable in relation to him, and

(d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.

s. 163 References to employment tribunals.
(1) Any question arising under this Part as to—

(a) the right of an employee to a redundancy payment, or
(b) the amount of a redundancy payment,
shall be referred to and determined by an employment tribunal.

(2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

s. 164 Claims for redundancy payment
(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date-

(a) The payment has been agreed and paid

(b) The employee has made a claim for the payment by notice in writing to the employer,

(c) A question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal

s. 204 Law governing employment.
(1) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

74. The Claimant's counsel referred me to the following authorities in written submissions. Firstly, *Cambridge & District Co-operative Society Ltd v Ruse*

[1993] IRLR 156: where an employee refused an offer of a position as butchery department manager at a supermarket after his role as butchery shop manager was made redundant. The EAT held that the question of suitability of an offer of alternative employment is an objective matter, whereas the reasonableness of the employee's refusal depends on factors personal to him and is therefore a subjective matter to be considered from the employee's point of view.

75. Second, I was referred to *Bird v Stoke-on-Trent Primary Care Trust* [2011] UKEAT/0074/11/DM, which builds on the principle above. There, the EAT held that "*the question whether the employee had sound and justifiable reasons for refusing the offer has to be judged from the employee's point of view, on the basis of the facts as they appeared, or ought to have appeared, to the employee at the time the offer was refused*" (para 19) and "*sound and justifiable from the employee's point of view, even if others might not have thought that his reasons were sound and justifiable*".

76. The Respondent's counsel referred me to the following authorities in written submissions. Firstly, *Ely v YKK Fasteners (UK) Ltd* [1994] ICR 164, is an authority for the proposition that an equivocal expression of an intention to resign, mistakenly construed by the employer as a resignation, could be relied on by the employer (in that case for the purpose of supplying the employer with a reason for dismissal in the circumstances) where it sought to hold the employee to their resignation.

77. Secondly, *Chapman v Letheby & Christopher Ltd* [1981] IRLR 440. In this case, the EAT held that the construction to be placed on (in that case a letter of dismissal) should not be a technical one but should reflect what an ordinary, reasonable employee (in that case) would understand by the words used. It should be construed in light of the facts known (in that case to the employee) at the date of receipt of the letter.

78. Thirdly, *Sothern v Franks Charlesly and Co* [1981] IRLR 278, a case turning on words said by an employee to her employer (namely: "I am resigning"), the Court of Appeal held that when words used by a person are unambiguous words of resignation and so understood by the employers, the question of what a reasonable employer might have understood does not arise. The natural meaning of the words and the fact that the employers understood them to mean that the employee was resigning cannot be overridden by appeals to what a reasonable employer might have assumed.

79. Finally, *Secretary of State for Employment v Globe Elastic Thread Company Ltd* [1980] AC 506. This case is relied on by the Respondent as authority for the proposition that nothing in the nature of an estoppel between the employer and employee could confer on the tribunal a jurisdiction beyond that given by statute (in that case the Redundancy Payments Act 1965) so as to make a redundancy payment agreed on between them a payment that the employer was liable to pay under the legislation.

Conclusions

Issue 1: Did the Claimant resign or was there a dismissal under section 136(1)(a) or (b) of the ERA on 15th February 2020?

80. In my judgment, the Claimant's case cannot proceed on the basis of the events up to December 2018. This is because, whilst there was a genuine redundancy situation during her IA in relation to her 'Global Brand Director' role, by operation of section 138 of the ERA, the Claimant accepted a new contract of employment starting on 1 January 2019 with the Respondent. The Claimant remained in the ITPD role beyond the statutory trial period of 4 weeks (as defined in section 138(3)(b)), which was not extended by agreement between the parties for any retraining (the Claimant having accepted that there was no need for retraining).

81. The offer of the ITPD role, whilst it was not the Claimant's preferred or settled destination, was accepted by the Claimant on 21st December 2018 when she signed the letter from Tanvi Shah. The offer was therefore clearly made before her Global Brand Director role terminated on 31st December 2018 and the new contract began immediately thereafter, as required by section 138(1).

82. Accordingly, by operation of section 138(1), there was no dismissal as at 31st December 2018. It unnecessary for me to therefore consider any question of time limits as regards the events in 2018.

83. I accept the Respondent's submission that it is not open to the tribunal, as a matter of jurisdiction within the statutory framework relating to redundancy and redundancy payments in the ERA, to consider a claim for a redundancy payment on the basis of some agreement (contractual or otherwise) which may (or may not) have been concluded between the parties in 2018. In this case, this concerns the Claimant's argument that she believed she had a choice, in 2019 and during the currency of the ITPD role, to decide whether to accept any new role which might be identified or to resign and take a redundancy 'package', the substance of which was said to have been available to her in the 2018 process.

84. I have made no findings in relation to any such 'package' or whether there was any agreement or promise attached thereto. The Claimant has expressly limited her claim before the tribunal to a statutory redundancy payment. Accordingly, the statutory basis to agree to extend any trial period for the purposes of a new contract of employment is necessarily limited by virtue of subsections 138(2), (3) and (6).

85. On that basis, I must consider the events from December 2019 to February 2020 with reference to the ITPD contract and the circumstances at that time.

86. I conclude that the Claimant voluntarily resigned from her ITPD role by email on 4th December 2019. This is because:

    86.1. The two emails sent to the Respondent on that day were clear and unambiguous. The Claimant refers in both emails to leaving Unilever and in both emails to it being a decision which she has taken. In my judgment, the remainder of the emails sets out her reasoning for her decision. The Respondent understood the Claimant to be resigning from her role in circumstances where she had made a choice to resign instead of proceeding with the new WL3 role (or, at the very least, waiting for the outcome of the OJP process in relation to that role, which was going to be offered to her).

86.2. The Claimant did not wish to remain working for the Respondent because:

86.2.1. As per her emails, she was unhappy about her career progression with Unilever and did not want to be placed in a redundancy situation like 2018 in future; and

86.2.2. She wanted to undertake new opportunities, including the Masters programme at Oxford.

86.3. It was the Claimant who voluntarily terminated her contract and she did this as a personal decision for her own interest. As she said to Mrs Sullivan in the email to her, the decision had nothing to do with Mrs Sullivan or the team in which she was working.

86.4. As I have found, on 13th December 2019, the Claimant asked Mrs Sullivan whether the email on 4th December would be treated as her resignation or whether she needed to put it in writing again. This demonstrates the Claimant's intention at the time for the 4th December emails to be accepted by the Respondent as her resignation. Further, the discussion in the meeting on 13th December, which made clear the Respondent's position on redundancy, did not lead to any change in the Claimant's decision.

86.5. The Claimant again did not alter her decision to leave following the enquiry by email from Mrs Sullivan on 16th December 2019. I conclude that the Claimant's focus, having learnt of the Respondent's position, was on challenging that position based on what she believed had been agreed in 2018.

86.6. Within only a few weeks of her emails of 4th December, the Claimant had obtained an offer for a senior marketing position at her new employer. This, again, demonstrates her clear intention to leave in order to find new opportunities, as she had said she wanted to do.

87. The Respondent accepted the Claimant's resignation and duly held her to her 3 month notice period under her existing contract of employment. The Claimant accepted in evidence this ran until 4th March 2020 but it was agreed between the parties before the tribunal that her employment had ended on 15th February 2020. It was the Claimant's decision as to the date she left the Respondent's employment. She terminated the contract before the end of the notice period on a date which best suited her, following her exploration of the queries she had concerning the vesting date of any shares and the date any bonus crystallised. The Respondent did not challenge or object to this; it accepted it.

88. Accordingly, the Claimant was not dismissed by the Respondent within the meaning of section 136(1)(a) because the Respondent did not terminate the Claimant's contract of employment at all.

89. As to a dismissal within the meaning of section 136(1)(b), the Claimant must have been employed under a limited term contract where that contract terminates by virtue of the limiting event without being renewed under the same contract. Having granted the Claimant's application to amend her claim to include this argument, her pleading on it is set out within the agreed list of issues. It was advanced on the basis that the ITPD role existed under a limited

term contract which expired on 15th February 2020 without being renewed under the same contract.

90. The Claimant was employed in the ITPD role under the contract of employment effective from 1st January 2019, which she signed on 8th January 2019. This is not expressed to be for a limited term or fixed term. In fact, it provides for a 3 month notice period which operated after the Claimant's resignation on 4th December 2019. The Claimant worked a substantial amount, but not all, of her notice period under her contract.

91. Accordingly, I conclude that the Claimant's contract of employment was not a limited or fixed term contract, notwithstanding the expectations about the project. It did not (or would not) expire on 31st December 2019 or 15th February 2020 by reason of it being of limited term or following a limiting event (which is not specified in the contract). There was an expectation that the ITPD role would come to end by 30th June 2019, which was extended owing to the success of the project. This was expected to be the end of 2019, as referred to in the letter of 27th May 2019 by Lakshmi Menon, but it was not the case that the Claimant's employment would simply expire on 31st December 2019 without further agreement.

92. The Claimant's contract of employment continued, in accordance with its terms, until it was determined by notice, which was triggered by the Claimant's resignation. There was, accordingly, no dismissal within the meaning of section 136(1)(b).

Issue 2: If there was a dismissal on 15th February 2020, was there a redundancy situation at that point in time?

93. Having found there was no dismissal, the claim for a statutory redundancy payment fails because the Claimant does not have the right to such a payment under section 135(1)(a) of the ERA.

94. However, even if I had found there was a dismissal, there was, in my judgment, no redundancy situation at the material time. The Claimant's argument that there was such a situation, as set out under issue 2 in the agreed list of issues, cannot succeed because it is founded on the premise that the parties had agreed to delay the redundancy whilst she carried out the ITPD role and the parties looked for a permanent suitable alternative. The Claimant puts it in the list of issues as: "No such alternative was found or offered and therefore, there was a redundancy situation when she was dismissed on 15th Feb 2020".

95. For the reasons given above, the parties cannot override the statutory framework for a redundancy payment under the ERA by reference to some other agreement about deferring a redundancy 'package'. The original redundancy situation was resolved at the end of December 2018 when the Claimant accepted the ITPD role. Section 138 had effect, as set out above, and any statutory right the Claimant had to claim a redundancy payment arising from the 2018 situation was extinguished when the statutory trial period ended in early 2019.

96. If there was a redundancy situation in February 2020, it therefore would have to arise from events concerning the ITPD role. I conclude that the requirements of the Respondent for employees to carry out work of the kind performed by

the Claimant in the ITPD role had not ceased or diminished and were not expected to cease or diminish. This is because:

96.1. There was a continuing need for the Claimant's role and function, which had evolved into the new WL3 role. The Claimant was going to be appointed into this role, but for her resignation. The Claimant had actively participated in the creation of the role and had described it to Lakshmi Menon on 14th November 2019 as the job she was already doing.

96.2. The Respondent had not communicated to the Claimant that her role was at risk of, or was being made, redundant. The ITPD role existed under a continuing contract so the Respondent would have had to have given notice to the Claimant if it wished to bring the role to an end. It did not do this. Its position is clear from the email from Jill Clarke to Mrs Sullivan on 25th November 2019 where she explains that the Respondent is "*just making her perm into the role she is already in*".

96.3. The Claimant decided to pursue other opportunities rather than move into this role, but that was not because of any redundancy situation. The Claimant's mention of redundancy at the point of resigning concerned the payment of her 'package' which was nothing to do with the requirements of the business at the time she sent the email on 4th December 2019, or at any time thereafter.

97. For these reasons, there was no redundancy situation at the time of the termination of the Claimant's employment.

Issue 3: If so, was the dismissal 'by reason of redundancy' or by reason of some other cause.

98. There being no dismissal, the tribunal does not need to answer this question. However, it follows from the determination of issue 2 that, had I found there was a dismissal, it could not have been by reason of redundancy in the circumstances of this case and the statutory presumption in section 163(2) of the ERA is rebutted.

Issue 4: If there was a redundancy situation upon any dismissal and the dismissal was by reason of redundancy, did the Respondent make an offer of suitable alternative employment to the Claimant?

99. Had I found there was a dismissal by reason of redundancy, I would have found that, for the purposes of section 141 of the ERA, the Respondent did make an offer of suitable alternative employment. This is because:

99.1. I have found that Mrs Sullivan had assured the Claimant that the new WL3 role was hers. Further, Mrs Sullivan forwarded an email to the Claimant which she had sent to Lakshmi Menon on 15th November 2019 which disclosed in plain terms that it was her plan to appoint the Claimant to the role.

99.2. The Claimant knew that the role was intended for her and had helped to draft the job description, adding the term 'Agile' to the job title, which suited her skills and experience.

99.3. For the purposes of section 141(1), such an offer does not need to be in writing. Both parties were treating the OJP process as a formality

and Mrs Sullivan had initially hoped that could have been avoided, but the Claimant understood the Respondent's procedure.

99.4. It is agreed between the parties that no written offer of the new WL3 role was made to the Claimant before she submitted her resignation. Whilst counsel for the Claimant pointed, in submissions, to parts of the evidence where it was said that an offer was going to be made (on the footing an offer had not been made at that point), I conclude that this referred to a formal written offer. The Claimant's Global Brand Director role, the ITPD role and the extension were all dealt with formally in writing. It is more likely than not that the Respondent would have formally made a written offer had the Claimant not sent the emails on 4th December 2019.

99.5. However, her emails of 4th December 2019, in my judgment, demonstrate that the Claimant had made a decision about whether to proceed into the new WL3 role or not (which, clearly, she decided against). This was on the basis that the role was there for her to accept if she wished. Had she not thought the role was hers, it would not have been necessary to set out other possible candidates for the role in her email. The Claimant did this, in my judgment, because she was trying to help Mrs Sullivan, whom she respected, with filling the void which she knew would be created by her departure.

Issue 5: If so, did the Claimant unreasonably refuse an offer of suitable alternative employment?

100. Had I found there was a dismissal by reason of redundancy, I would have found that the new WL3 role was a suitable offer of alternative employment for the Claimant because, objectively viewed, the new WL3 role was an evolution of the role the Claimant had already been doing for almost a year, paid similarly on local terms and within the same band. It had a new title and description (into which the Claimant had input on its design) and was to be treated as permanent within Mrs Sullivan's team. Accordingly, insofar as the terms and conditions of employment between the ITPD role and the new WL3 role differed, such a difference was minor and, in my judgment, meant the new role was entirely suitable for the Claimant. The Claimant herself recognised this in her email of 14th November 2019 to Lakshmi Menon when she described it as: *the job I'm already doing; but a newly formed up role within CMCO.*

101. For the reasons explained above regarding the effect of section 138 of the ERA, it is not appropriate to try to compare the new WL3 role with the Claimant's redundant role from 2018. Section 141(3) requires the tribunal to consider the previous contract. That is the ITPD role contract during the currency of which the offer of a new contract or renewed contract was made. It would not make sense to embark on a process of picking a contract previous to the contract under which the Claimant was employed at the time of the new offer.

102. As to the question of whether such an offer was unreasonably refused by the Claimant, I must ask myself whether the Claimant had sound and justifiable reasons for refusing the offer, considered from her point of view. In my judgment, whilst the Claimant had other aspirations in a division, I would have

found that it was unreasonable to have refused the offer of the role, had there been a dismissal by reason of redundancy at the time. This is because:

102.1. As above, the new role was an evolution of the role she was already doing on the same salary band. Had there been a redundancy situation, this would have given the Claimant the opportunity to continue at the same pay grade in a role which was suitable for her. As with the ITPD role, this would not have prevented her from continuing to explore her longer term career aspirations for a divisional role.

102.2. On 11th February 2019, the Claimant told Anu Razdan that the project was going really well and it was a really good 'come back'. The Claimant said she liked working with the team and the project was exciting. On 3rd September 2019, the Claimant told Mrs Sullivan that she had explained to the HR Vice President for Unilever Sanayi that she loved the project she was doing and was not planning to go back to Turkey. I conclude that the Claimant found the role fulfilling and enjoyed working with the team. She did have longer term goals, but, had I found that there was a dismissal for redundancy, there was no other role being offered which better suited the Claimant's skills and experience than the new WL3 role at the time.

102.3. Accordingly, I would have found that it was unreasonable to have refused the new WL3 role when she had been content to undertake the ITPD role, and extend it, on similar terms. There were no sound and justifiable reasons to reject it, had there been a redundancy situation at the time. The new WL3 role would not have prevented her from considering longer term ambitions in future if she wished to do so.

Outcome

103. For the above reasons, the Claimant was not dismissed by the Respondent. She resigned on 4th December 2019 and her employment terminated following her working out some, but not all, of her notice period.

104. The Claimant is not entitled to a statutory redundancy payment and the claim is accordingly dismissed.

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Employment Judge Nicklin

_____

Date 23rd April 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....26th April 2021.....

.....Olu.....
FOR EMPLOYMENT TRIBUNALS