



# EMPLOYMENT TRIBUNALS

**Claimant**  
Mr R Barthet

v

**Respondent**  
Camberley Heath Limited

**Heard at:** Norwich (by CVP)

**On:** 04 & 05 August 2021

**Before:** Employment Judge Postle

**Members:** Ms J Costley and Ms C Smith

## Appearances

**For the Claimant:** In person.

**For the Respondent:** Mr Blitz (Counsel).

## RESERVED JUDGMENT

The claimant's claim under the Equality Act for the protected characteristic of age and sex are not well founded.

## REASONS

1. The claimant brings claims to the Tribunal under the Equality Act 2010 for the protected characteristic of direct age and sex discrimination. The specifics of the claim were set out at a case management hearing before Employment Judge Gumbiti-Zimuto on 19 May 2021 at paragraphs 6(i) to 6(viii).
2. The claimant relies on the following comparators:
  - 2.1 Dave Heath, Head Chef; Ross Jones, Head Greenkeeper and Steven Speller, Head Professional for the claims under the protected characteristic of age.
  - 2.2 Sian Gover, Office Administrator for the claims under the protected characteristic of sex.

3. The respondent's defence is that the claimant's employment was terminated on the grounds of redundancy due to their being a diminished need for his role which was unrelated to the impact of Covid-19. Furthermore, that the claimant was not placed on furlough as there was a diminished need for his role. That the reason for the claimant's redundancy was the proportionate means of achieving a legitimate aim namely the business needed to carry out a re-structure, the reporting lines too many staff involved. Therefore there was a requirement for a simplified management role and reporting lines to achieve efficiency as a result of the diminished work load.
4. In this Tribunal we heard evidence from the claimant through a prepared witness statement.
5. For the respondent we heard evidence from:
  - 5.1 Miss Fiona Horrocks, Director;
  - 5.2 Mr Ross Carr, Director; and
  - 5.3 Miss Susan Carpenter, Director.All giving their evidence through prepared witness statements.
6. The Tribunal also had the benefit of a bundle documents consisting of 137 pages.

### **Credibility**

7. The Tribunal felt it necessary to comment on the credibility of the respondent's witnesses who were at best mistaken or confused in their evidence or at worst found the truth at times an alien concept. The Tribunal were surprised at the manner and the truthfulness of the respondent's witnesses, although accepting ultimately that had no bearing on the specific claims of the claimant. An example of the respondent's inability to give clear evidence was the vast discrepancies in dates as to when Directors Meetings at Board level were held to discuss re-structuring, when those decisions were made to terminate the claimant's employment and the respondent's witnesses creating an illusion that the general manager took over the claimant's duties when the claimant was dismissed was clearly and plainly an untruth as he was dismissed at the same time as the claimant was dismissed and therefore could not possibly have taken over the claimant's duties. It was an unfortunate indictment on the credibility of the running of the respondent's golf club. The Tribunal repeats, ultimately that had no bearing on the outcome of the case. The Tribunal was sufficiently surprised that they wished to make comment on the respondent's credibility.

### **The Facts**

8. The claimant was employed as the respondent's Operating Manager from 7 September 2019 until his dismissal on 3 April 2020. The reason being

advanced for the claimant's dismissal was there was no longer a requirement for the claimant to carry out his duties. That such duties as the claimant had could be dissipated amongst levels below him in order to achieve efficiencies and in effect re-structure the food and beverage department which the claimant appears to have been responsible for.

9. In fact the claimant's role particularly involved being responsible for the respondent's bar and function suite and the teams behind those areas, recruitment, training, rotas, monitoring and managing the stock. It does appear that this was a role created for the claimant in August/September the previous year.
10. At some stage in January 2020 the exact date is unclear as the respondent does not appear to keep minutes of their Board Meetings but apparently identified surplus roles in the food and beverage area which included the claimant's role.
11. During an appraisal meeting on 6 February 2020 the claimant was told that a training course he had put in for was not appropriate for his role and that consideration should be given for future courses that were more relevant to the claimant's role.
12. Again the date is unclear as there appears to be no minuted note of the Board's deliberation but it does seem the case that the Board reviewed the structure of the organisation which had previously been in place. At some time in March, the dates differ between the respondent's witnesses, the Board identified that there were too many staff within the respondent's organisation particularly the claimant's department and more particularly the role of the claimant. It was decided by the Board the claimant's role could be made redundant without affecting the running of the food and beverage department. The claimant was not placed on furlough due to their being a diminished need for the claimant's role. It is clear the business was to be restructured and reporting lines less in number to avoid duplication. The role of the claimant's management function was therefore simplified and reporting lines reduced. The claimant's role was to be made redundant and a decision was reached at sometime in March again the date is unclear that the role of Operations Manager would be removed.
13. Dave Heath the Head Chef was 45 years old at the time, clearly in an entirely different role to that of the claimant and therefore it would be inappropriate to place him in some form of pool for selection with the claimant for potential consideration for redundancy.
14. Likewise Ross Jones aged 35 again an entirely different role to that of the claimant being the Head Greenkeeper.
15. Steven Speller the Head Professional was apparently not employed directly by the respondent in any event. He held an entirely different and specific role to that of the claimant.

16. Finally, Sian Gover a female comparator who again worked in office administration which was an entirely different area of the business to that of the claimant.
17. On the same day as the claimant was dismissed the following employees were also dismissed by reason of redundancy:
  - 17.1 Mark Allden aged 47, General Manager.
  - 17.2 Callam May aged 26, a food and beverage assistant.
  - 17.3 Billy Watts aged 31, female, food and beverage assistant.
  - 17.4 Gaynor Conner aged 52, female, a food and beverage assistant.
18. The claimant was invited to attend a meeting on 3 April 2020 at which he was informed by Miss Carpenter the decision had been made to make the role of Operations Manager redundant as he was the only person carrying out this function his employment was to be terminated with notice.
19. On 4 April 2020 the claimant sent a formal appeal letter to the Directors (pages 91-93), Mr Carr agreed to prepare the response to that appeal and that was sent to the claimant on 8 April 2020 (page 96).

### **The Law**

20. The burden of proof is on the claimant to prove on the balance of probabilities facts from which the Tribunal could conclude in the absence of an adequate explanation that an unlawful act of discrimination has been committed before the burden of proof moves to that of an employer who then explain the reason or reasons for that alleged discriminatory treatment and to show that the protected characteristic played no part in those reasons.
21. So in a nutshell the claimant has to show prima facie evidence of some less favourable treatment on the grounds of age or sex and then the respondent has to explain why that act or acts has been carried out by them and that it is not for a reason connected to the claimant's sex or age.

### **The Tribunal's Conclusions**

22. Throughout this case it is clear that the claimant has wanted to advance a claim based on an unfair dismissal under the Employment Rights Act particular failure to warn or failure to consult and that the decision to dismiss by reason of redundancy was not related to any redundancy situation as defined by the Employment Rights Act 1996.
23. However the question the Tribunal has to answer quite simply, was the claimant treated differently because of sex or age?

24. Again it is true there is nothing in the documents such as they are that in any way infers that the reason for the claimant's redundancy was in any way related to his sex or age. It is also the case that other employees were treated exactly the same as the claimant regardless of their age or sex at the relevant time. Particularly other people were made redundant, a variety of ages and gender as referred to earlier in this Judgment.
25. What the Tribunal can conclude is there is absolutely no prima facie evidence to show that the reason for the claimant's dismissal was in any way related to the claimant's sex or age.
26. The claimant's comparators that he has chosen are the wrong comparators. They occupy entirely different roles and are not appropriate comparators when one looks at them their roles are materially different to that of the claimant.
27. What is clear albeit muddled, the respondent sometime between January and March 2020 set about a review of the respondent's organisation particularly the food and beverage department. It was identified that efficiencies and savings could be made in the claimant's department. Further that the claimant's role could be made redundant and that some time in March a decision was made at Board level to make the claimant's role of Operations Manager redundant. That had absolutely nothing to do with the claimant's sex or age. It was a commercial decision based on a review of the department which concluded the claimant's role could be removed and his functions dissipated amongst junior staff there was in fact no need for the claimant's role.
28. The Tribunal accepts no doubt the call made to the claimant's voicemail on 3 April 2020 inviting him to a meeting had been short and to the point but there is nothing to suggest that would have been due to the claimant's age or sex and similar calls would have been made to the other four employees of mixed gender who were made redundant on the same date.
29. It is true that whilst the claimant may not have been told specifically he had right of appeal nevertheless when the claimant did appeal by letter Mr Carr responded to it as a Director on behalf of the respondent whether the claimant liked the outcome of the appeal or not the fact of the matter remains that the claimant was allowed to appeal.
30. The suggestion that not being placed on furlough is an act of age and/or sex discrimination is simply not borne out by the facts. Who would be furloughed and who would not, would be a commercial decision and would not be a decision based on an employees sex or age, there was no evidence advanced in this case to suggest it was.
31. As to the refusal to pay for training during the appraisal meeting, the respondent's explanation is quite clear, the training the claimant was proposing was not relevant to his particular role and at the time he was

told to find a suitable training course that was relevant to his role. That had absolutely nothing to do with the claimant's age or sex.

32. The claimant's claims against the respondent are therefore dismissed.
33. The parties originally required the Reserved Decision to be delivered at a hearing on 8 October, that hearing is now vacated as Judge Postle will be recovering that week from an operation.

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Employment Judge Postle

Date: .....9.9.2021.....

Sent to the parties on: ..16.09.2021  
THY

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For the Tribunal Office