Case Number: 2502297/2020

THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs H Stanford**

Respondent: **Aspers Management Services Ltd**

Heard at: **Newcastle CFCTC (By CVP)** **On: 4 May & 16 July 2021**

Before: **Employment Judge Newburn**

Members:

Representation:

Claimant: **Ms Thakor-Rankin (Consultant)**
Respondent: **Mr McFarlane (Consultant)**

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

REASONS

1. The Claimant brought a claim of unfair dismissal further to being dismissed following a redundancy exercise carried out by the Respondent.

2. The Respondent's defence was that the Claimant was dismissed due to redundancy following a fair procedure in compliance with s98 Employment Rights Act 1996.

The Hearing

3. The Claimant gave evidence on her own behalf. Mr R Moncur (Chief Risk Officer), Mr R Noble (Chief Executive Officer), and Mr N Snowden (IT Director) gave evidence on behalf of the Respondent.

4. Before me I had an electronic bundle with 275 pages, with an updated Schedule of Loss from the Claimant.

5. At the start of the hearing, there were some issues with the video connection and sound however after resolving the same the parties agreed a list of issues and a timetable for the matter. Further to this exercise it became clear that an additional day would be needed to hear the evidence and it was agreed that the best course of action would be to get through the

majority of the evidence on the first day and to return at the next available opportunity for one further day during which liability, and, if appropriate, remedy, would be addressed. Accordingly, the hearing was part-heard and re-listed for one further day, on which it was concluded.

The Issues

6. At the start of the hearing, the list of liability issues were agreed to be as follows:

   6.1. Was there a redundancy situation?
   6.2. Was redundancy the principal reason for the Claimant's dismissal?
   6.3. If so, did the Respondent act fairly?

Findings of Fact

7. The Claimant started her employment at Aspers Newcastle Limited on 22 August 2005. The Claimant worked throughout her 15-year period of employment in the Newcastle casino. Initially she worked as a cashier and through regular internal promotions she progressed to the position of Compliance Assistant, this role later being re-titled as Safer Gambling Co-ordinator. The Claimant carried out this role, providing support to the Group, whilst based in Newcastle.

8. The Respondent company is part of the Aspers Group (the Group) which operates casinos in Stratford, East London, Newcastle, Northampton, and Milton Keynes. The casinos are run by separate companies and the Respondent company provides support services for the Group's common functions, such as Compliance, IT, and HR.

9. The Stratford site is the largest of the Casinos, producing around 70% of the Group's revenue. The Respondent also provided support services to the Stratford site although the Respondent's staff were based in various sites across the Group. However, there had been a number of issues at the Stratford site which were affecting the site's gaming and liquor licenses.

10. The Local Authority had imposed conditions on the gaming and liquor licences for Stratford which meant that it was at a particular risk as a breach of any of those conditions could have led to the gaming or liquor licence being revoked or suspended. The liquor licence at Stratford had previously been suspended resulting in that casino being unable to serve alcoholic drinks, having an impact on the Group's revenue.

11. Mr Noble's evidence was that towards the end of 2017 he had been reviewing the structure of the Group and felt the Group's Safer Gambling arrangements were inadequate and needed to be reorganised.

12. In 2018 there was an incident at the Stratford Casino involving the suicide of a customer. This led to an investigation and licence review by the Gambling Commission, as well as an internal review from the Group to address the issues.

13. The parties agreed that it was vital to the Group to ensure the Stratford Casino was protected.

14. In June 2019, Mr Moncur was hired by the Group. He had significant Compliance and Regulatory experience and was engaged as Chief Risk Officer.

15. Mr Moncur's evidence was that when he was hired, he felt there was a need for the teams providing Safer Gambling, Anti-Money Laundering, and Regulatory Compliance support to work more closely together with the operations teams. He believed that there were difficulties in working between the teams when they were based in different offices and this would be improved by moving those teams to work together at one site in Stratford.

16. In 2019 the Claimant was transferred to the Respondent company as part of a decision to transfer a number of common functions, including the Compliance function/team, into one group company rather than the operatives being employed at each individual Casino site.

17. On 19 August 2019, after returning from annual leave, the Claimant had a meeting with her line manager. The purpose of this meeting was to discuss the Company's new compliance strategy in response to the Gambling Commission's ongoing review. The Claimant's line manager informed the Claimant that she had spoken with Mr Moncur regarding the new strategy and further to that discussion it was decided that the Claimant's job title would change from Compliance Assistant to Safer Gambling Co-ordinator.

18. The change was in title only. Mr Moncur's evidence was that he had spoken with the Claimant's line manager regarding the Claimant's job role, and from this discussion he had understood that the actual day-to-day work carried out by the Claimant was more closely aligned with the job title of "Safer Gambling Co-ordinator" and he therefore felt the Claimant's job title needed to be amended to properly reflect the role she actually carried out. The Claimant was one of a number of employees whose job title was changed further to Mr Moncur's review.

19. The Claimant was not provided with a written statement to confirm the change to her job title.

20. Mr Moncur stated that he had spoken with HR at that time regarding whether employees whose job titles had been amended needed any formal update of their contract of employment. He was informed that because the change was simply an amendment to the job title, which in the Claimant's case was simply to reflect the reality of her actual role there was no requirement to provide these employees, including the Claimant, with a written statement to confirm the change. Mr Moncur stated was not entirely satisfied with this decision, however he was guided by HR as this was not his area of expertise.

21. In early 2020 the Group proposed a restructure of its Compliance/Risk structure. Mr Moncur was involved with the planning of the restructure, and a copy of the document outlining the proposal appeared at page 70 of the bundle. This proposed restructure led to the redundancy process that involved the Claimant.

22. The effect of the proposed restructure on the Claimant was that the role of Safer Gambling Co-ordinator in Newcastle would no longer exist. However, the Restructure proposal document at page 75 showed that 2 new Compliance Assistant roles, Compliance Assistant A and Compliance Assistant B, were proposed in the new Group structure.

23. On 9 June 2020, the Group announced a Redundancy proposal, which appeared at page 87 of the Bundle.

24. Mr Moncur held redundancy consultations with the Claimant. On 9 June 2020, Mr Moncur emailed the Claimant to invite her to a consultation meeting via Microsoft Teams. Mr Moncur included in that email a list of vacancies across the Group that were presently available, as

well as an application for voluntary redundancy, which appeared at pages 92 to 122 of the Bundle.

25. On 12 June 2020, Mr Moncur and the Claimant had the first of four consultations. The Group's HR team had allocated Ms Nicholson as notetaker for the meeting. Ms Nicholson was a PA and did not work in HR.

26. During this meeting Mr Moncur explained the reason for the restructure and discussed the alternative job list provided in his email of 9 June 2020 and confirmed to the Claimant the deadlines for applying for jobs was flexible. The Claimant asked a number of questions regarding the job list and voluntary redundancy. At the conclusion of the meeting, the Claimant was asked if she had any further questions; the Claimant confirmed she did not at that time. Mr Moncur confirmed he would seek answers to the questions she had raised and would revert to her with them.

27. On 19 June 2020, Mr Moncur and the Claimant had the second consultation meeting, and Ms Nicholson was the assigned scribe. At the start of the meeting the Claimant was asked if she had any comments about the notes from the first consultation, and the Claimant confirmed that she did not.

28. During this meeting the Claimant asked Mr Moncur about the Compliance Assistant roles in the new proposed structure. Mr Moncur confirmed those roles were based in Stratford and that whilst presently he understood they were not available, interested parties were encouraged to enter a note of interest.

29. The Claimant asked whether taking voluntary redundancy at that stage (which would mean leaving just before she had reached 15 years continuous service), would affect the amount of redundancy pay she would receive. Mr Moncur told her that he would speak to HR and revert to her with figures.

30. The Claimant also informed Mr Moncur that she wanted to keep her laptop. Mr Moncur confirmed he would speak to Mr Snowden the IT director about this.

31. The minutes of the meeting at page 144 and 145 of the Bundle stated that that Mr Moncur asked the Claimant if she was willing to relocate, and the notes suggested the Claimant confirmed that she was not.

32. Further to the second consultation meeting on 22 June 2020, the Claimant sent an email to Mr Moncur. In this email she asked a number of questions of Mr Moncur. She also indicated that she still needed information on voluntary redundancy and understood that others had been given answers to their queries sooner than she had because they had an HR representative present in their meetings. The Claimant asked Mr Moncur why she had not been considered for the Compliance Assistant roles at Stratford, as her role was Compliance Assistant prior to the change in 2019 when the title of her role was changed without any consultation with her. The Claimant was asked whether she was interested in applying for the Security Officer role available in Newcastle and she confirmed she was not. The Claimant also asked why she had been advised that the only available role in Newcastle was that of Security Officer however there was also a role of Croupier being advertised on the Group website, and this was a job she had previously undertaken with the Group. The Claimant also explained that her family circumstances at home were incredibly difficult at that time. This email appeared at page 147 of the bundle.

33. Mr Moncur's evidence was that he investigated the issue regarding the Croupier web advertisement and was informed by HR that the role was not available and that the advertisement must have been left on the website by mistake. He gave further evidence that because the Casino was closed due to COVID-19 the Group could not hire someone whose role was to physically work within the casino, and furthermore no one was ever hired into this position at that time.

34. On 25 June 2020, Mr Moncur emailed the Claimant to respond to the issues she had raised in her email including providing answers to her questions regarding her notice period and PILON, redundancy calculations, and the effect of the redundancy on any application she might make in future for a Personal Function Licence or Personal Management License. A copy of this email appeared at page 152 of the bundle.

35. In this email Mr Moncur explained that the role of croupier had been mistakenly left on the website. With respect to the Claimant's question concerning the change to her job title, Mr Moncur wrote that the roles of Compliance Officer and Safer Gambling Co-ordinator were not the same and this was detailed to her in the presentation and discussion she had with her line manager on her return from annual leave in August 2019 when her job title was changed. Accordingly, Mr Moncur explained in his email that the Claimant's role was not the same as the new Compliance Assistant roles in Stratford. However, as she had experience of a role in compliance assistance, he would welcome an expression of interest in the role in Stratford. Mr Moncur then explained that due to staff being furloughed, the number of available scribes had been limited, and not all departments had had an HR representative present at their meetings.

36. On 30 June 2020, Mr Moncur and the Claimant had a third consultation meeting. Ms Nicholson was allocated as the scribe for the meeting. The notes of this meeting began at page 158 of the bundle. During this meeting, the Claimant was asked if she had comments on the notes from the two previous meetings. The Claimant confirmed that the notes had incorrectly stated that she had said she was not interested in relocation, however she confirmed that in the first meeting she had actually stated that she would need to speak to her husband about that and revert.

37. Mr Moncur confirmed he understood and asked the Claimant if she was considering relocation. The Claimant stated that whilst she had confirmed in the second meeting that she had decided not to relocate, since that time a Compliance Assistant vacancy at Stratford had been advertised as a vacancy, therefore she would need to discuss the same with her husband.

38. At this point the Claimant asked whether there would be any potential relocation package. Mr Moncur confirmed that given the financial situation of the Group due to the lockdown, there would not be. However, Mr Moncur advised that if the Claimant was seriously considering relocation, the issue of a relocation package could be readdressed at a later date. Mr Moncur told the Claimant that he would encourage her to apply for the Compliance Assistant job if she was considering relocation. Mr Moncur then informed the Claimant that the deadline for applying for the compliance role was that coming Friday.

39. The Claimant also enquired as to whether a Security Officer vacancy in Newcastle was still available or whether it had been filled. Mr Moncur did not know the answer immediately and confirmed he would look into that. The Claimant stated Mr Moncur and not revert to her on this point.

40. On 30 June 2020, Mr Snowden, the Group's IT director contacted the Claimant on LinkedIn to ask her what she had decided to do with her laptop. Mr Snowden gave witness evidence to confirm that he had a list of people whose jobs were at risk of redundancy, and he was contacting people at risk to see if they had any requests to keep their laptops. He stated that he did not have any information regarding the progress of redundancies outside of the IT group.

41. On 7 July 2020, the Claimant and Mr Moncur had their fourth consultation meeting. Ms Nicholson was assigned as the scribe. The Claimant was asked if she had comments on the notes from previous meetings. The Claimant confirmed that she felt the notes did not reflect her position regarding relocation. Mr Moncur asked what she felt would be a more accurate reflection of her words. The Claimant confirmed that it would have been more accurate to say that the ability for her to apply for the role of Compliance Assistant in Stratford was deliberately kept from her until such time as the Group was confident that she was not willing to relocate to Stratford.

42. Mr Moncur then discussed with the Claimant why the Compliance Assistant role was not available sooner. In Mr Moncur's oral evidence he explained that initially, as part of the restructure, 2 new roles (Compliance Assistants A and B) would be created in Stratford. These roles were ring-fenced for two people located in Stratford at risk of losing their jobs due to the restructure. Through the process however, one of those people applied for another role in the Group and was successful, accordingly, this meant one of the new Compliance Assistant roles in Stratford was open internally for applications.

43. Mr Moncur again informed the Claimant during the meeting that he would encourage her to apply for the Compliance Assistant job if she was willing to relocate to Stratford. At this point the Claimant replied to confirm that her children's circumstances meant that she was unable to relocate.

44. The Claimant then informed Mr Moncur that she knew other people who were not aware that there was a deadline to apply for the Compliance Assistant role however she had been advised that the deadline for applications was Friday. Mr Moncur stated that he believed the deadline was included in the email regarding the role and wondered if perhaps that line of the email had been missed.

45. At the conclusion of the meeting, the Claimant was asked if she was going to apply for any alternative vacancies, including the Compliance Assistant roles in Stratford, and she confirmed she did not, She was asked if she had any alternative proposals or points she wished to discuss and she confirmed she did not. Accordingly, Mr Moncur informed the Claimant that in those circumstances she would be made redundant on 29 September 2020. Mr Moncur explained that the Claimant had the right to appeal the decision and would be permitted to retain the company laptop. This decision was confirmed in an email of 10 July 2020.

46. On 16 July 2020 the Claimant sent an email to Mr Noble confirming that she wished to appeal against the decision to dismiss her.

47. The Claimant stated the following grounds for appeal:

47.1. The Claimant felt that she had been treated differently to others taking part in the consultation, as she believed that she was the only person who was not allocated an HR representative to take minutes of her meetings;

47.2. The Claimant felt that she had been pushed towards taking voluntary redundancy;

47.3. Mr Moncur failed to advise the Claimant about the Croupier role;

47.4. The role of Compliance Officer was only made available to the Claimant once she had confirmed she would not relocate;

47.5. The deadline for the Claimant to apply for the Compliance Assistant role in Stratford was short, and no one else was given that deadline;

47.6. The Claimant felt that all of this indicated that the Respondent simply wanted to push her down the route of voluntary redundancy and the decision to dismiss her was pre-determined.

48. The appeal meeting was held on 24 July 2020 and Ms Lewis, the HR Manager, was assigned to take minutes at the meeting.

49. During this meeting Mr Noble went through each of the points raised by the Claimant in her appeal request and discussed the points she raised during the meeting with her. The Claimant discussed her concern about the Compliance Officer role being deliberately kept from her, and Mr Noble informed her that the role was still not fulfilled and asked if she would be interested in applying if a relocation package could be provided. The Claimant however said no.

50. The Claimant's evidence was that by this point she had lost all trust and confidence in the Respondent and therefore could not accept another role within the organisation.

51. The Claimant had confirmed to Mr Noble in her email of 16 July 2020 and during the appeal meeting that she understood the Group was entitled to restructure the company, and that her role was redundant as a result of that restructure. Furthermore, the Claimant confirmed she did not wish to relocate to Stratford. Mr Noble therefore asked her what it was that she hoped to achieve from the meeting and the Claimant confirmed that she simply wanted her voice to be heard.

52. On 11 August 2020, Mr Noble wrote to the Claimant, responding to each of the points she had raised in the appeal meeting and her email of 16 July 2020. Mr Noble then confirmed that having investigated those issues and although he was sorry about the way in which the process had made the claimant feel, he had found the process had been robust and did not feel that she had been put to a disadvantage, as such, he would be upholding the original decision.

The Relevant Law

53. Section 98 of the Employment Rights Act 1996 (the Act) states:

> "*(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –*
>
> *(a) the reason (or if more than one the principal reason) for dismissal*

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it is… that the employee is redundant."

54. Redundancy is defined in s 139 of the Act which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact the requirements of the business for employees to carry out work of a particular kind, either generally or in the particular place, have ceased or diminished or are expected to cease or diminish permanently or temporarily, for whatever reason. The "for whatever reason" part comes from s 139(6) of the Act and means an employer need not justify objectively a commercial decision to respond to economic circumstances by reducing the number of employees. Safeway Stores v Burrell, affirmed in Murray v Foyle Meats held, if there was (a) a dismissal and (b) a "redundancy situation" (shorthand for one of the sets of facts in s 139 of the Act) the only remaining question under s 98(1) is whether (b) was the reason of if more than one the principal reason for the happening of (a).

55. Section 98(4) of the Act says:

"*Where an employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)*

(a) depends on whether in all the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee

(b) shall be determined in accordance with equity and the substantial merits of the case."

56. In Langston v Cranfield University the EAT confirmed the Tribunal must look at all ways in which a dismissal by reason of redundancy may be unfair. Dismissal by reason of redundancy may be unfair if there was (a) inadequate warning/consultation (b) unfair selection and (c) insufficient effort to find alternatives.

57. The main case on fair consultation is R v British Coal Corporation ex parte Price in which fair consultation was defined as (a) discussion while proposals are still at a formative stage (b) adequate information on which to respond (c) adequate time in which to respond and (d) conscientious consideration of the response.

58. As for fair selection British Aerospace v Green held provided an employer sets up a selection method which can reasonably be described as fair and applies it without any overt sign of bias which would mar its fairness, it will have done what the law requires. Taymech v Ryan says in choosing pools for selection an employer has a broad measure of discretion and the important point is it must give some thought to the matter.

59. In relation to efforts made to find alternative employment Quinton Hazel 30 Limited v Earl, at para 7, is authority for the proposition that the employer is not required to make exhaustive searches or efforts in this regard but rather only that which would be reasonable for the particular organisation.

60. In Polkey v AE Dayton it was determined that if a Claimant is entitled to compensation for unfair dismissal, their compensation can be reduced or limited to reflect the chance that the Claimant would have been dismissed in any event and that any procedural errors accordingly made no difference to the outcome.

61. Iceland Frozen Foods v Jones (approved in HSBC v Madden and Sainsburys v Hitt) confirm that a Tribunal must not substitute its own view for that of the employer unless the view of the employer falls outside the band of reasonable responses. The overriding test is whether the employer's actions at each step of the redundancy process fell within the range of reasonable responses.

Conclusions

62. Reviewing the agreed list of issues, the questions I had to determine were:

    62.1. Was there a redundancy situation?
    62.2. Was reason for dismissal redundancy?
    62.3. In treating redundancy as the reason for dismissal then, did the Respondent act fairly?

63. Taking each in turn I applied the relevant law to the finding of facts and determined as follows:

Question 1: Was there a genuine redundancy situation?

64. I found that there was a genuine redundancy situation within the ambit as set out under S.139 of the Act.

65. The evidence confirmed that the Group's Stratford site was facing potential threats to its licence due to increasing regulatory requirements, and further to the tragic incident involving a customer's suicide at the Stratford site in 2018 resulting in the Gambling Commission's review. As Stratford was the Group's largest Casino, both in terms of size and revenue generation, there was a genuine business need to protect it.

66. The Respondent had determined that the best way to protect the Stratford site and to improve the Group's regulatory compliance was to relocate the Group's support functions to the Stratford site.

67. A redundancy exercise was thereafter carried out involving employees from Newcastle, as well as employees in Stratford, Milton Keynes, and Northampton, who provided support functions to the Group.

68. The Claimant confirmed in her appeal request and in her oral evidence that she accepted the Respondent needed to take steps in light of the regulatory pressures it was facing, that this had led to a restructure, and that further to this restructure her role in Newcastle no longer existed.

69. For these reasons I am satisfied there was a genuine redundancy situation.

Question 2: Was Redundancy the reason for the Claimant's dismissal?

70. I found that Redundancy was the reason for the Claimant's dismissal.

71. Section 139 of the Act states that dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact that the requirements of the business for employees

to carry out work of a particular kind, either generally **or in the particular place**, have ceased or diminished or are expected to cease or diminish permanently or temporarily, for whatever reason (emphasis added in bold).

72. In response to the genuine redundancy situation the Group was facing, the Group had decided to relocate the Group's support functions to the Stratford site. The Claimant had carried out a compliance role in Newcastle and was part of the redundancy exercise which resulted in her dismissal.

73. The Claimant submitted in closing submissions that there was a sham redundancy, which had been staged in an effort to remove all Compliance Officers who could potentially be called to give evidence against the Respondent to the Gambling Commission.

74. However, there was not enough evidence put before me to support this assertion save as that the Claimant considered this could be inferred from the circumstances.

75. On the balance of probabilities, I preferred the Respondent's position on this issue. The evidence confirmed, and the Claimant had conceded, that there was a genuine redundancy situation resulting in the Group's restructure, and that the Claimant's position had been made redundant further to a redundancy exercise in line with that restructure. I therefore found it more likely that the support staff were made redundant further to the Respondent's drive to relocate support services to the Stratford site to provide better operational services, than that the Respondent had carried out the restructure to remove employees who may divulge information to the Gambling Commission.

76. This was also supported by the fact that the evidence indicated the Respondent repeatedly encouraged the Claimant to apply for a role in Stratford.

Question 3: In treating redundancy as the reason for dismissal then, did the Respondent act fairly?

77. The Test I had to consider was whether the decision to dismiss the Claimant was within the range of conduct that a reasonable employer could have adopted (i.e. the "band of reasonable responses test"), having regard to section 98(4) of the Act and the principles of fairness established by case law.

78. The Respondent's representative alluded to the case of Williams and ors v Compair Maxam Ltd in order to emphasise the fact that the legal test is not whether I would have acted differently if I were the Respondent. The test is objective; I had to ask myself whether the procedure adopted was within the range of responses open to an employer acting reasonably in the circumstances of the case.

79. I reminded myself of the leading cases on reasonableness in redundancy situations which confirmed that I must consider all the ways in which a redundancy may be unfair which broadly amount to (a) inadequate warning/consultation, (b) unfair selection, and (c) insufficient effort to find alternatives.

80. The Claimant argued that the procedure undertaken by the Respondent was unfair with regard to all 3 of these points and I summarise below the Claimant's arguments in relation to each in turn:

On Consultation

81. The Claimant argued that the process was flawed because she felt that:

    (a) Her redundancy was pre-determined, and therefore the consultation was meaningless; and,
    (b) She was put at a disadvantage compared with others in the consultation process because:

        (i) she did not have access to HR during her consultation meetings, meaning that information that was available to others who had that benefit was not available to her and Mr Moncur could not answer her questions;
        (ii) she was given a deadline to apply for the new Compliance Assistant role, where others were not; and,
        (iii) parts of the minutes from the consultation meetings did not adequately reflect the discussions that took place.

(a) <u>Pre-determination:</u>

82. I did not find that the Respondent had already determined that the Claimant would be dismissed. The Claimant's evidence on this point was that:

    82.1. Mr Snowden had contacted her on LinkedIn to ask whether she intended to keep her laptop or not; the Claimant felt this indicated that Mr Snowdon had already been informed, before the consultation concluded, that the Claimant was due to be dismissed; and,

    82.2. this accorded with her position that the process was a sham designed to eliminate compliance staff who could potentially give evidence against the Respondent to the Gambling Commission.

83. There was no documentary evidence before me to support the position that Mr Snowden was told that the Claimant would be dismissed. I found Mr Snowden to be a credible witness, and his stated reason for contacting the Claimant was also credible. As IT Director I accept that it was unlikely that Mr Snowden would have been involved in redundancy process and decisions regarding other departments and I accepted his evidence therefore that he was not aware of the progress of the Claimant's redundancy. Mr Snowden confirmed that as part of his role he had been asked to speak to all members of staff whose jobs were at risk and had expressed an interest in keeping their computer equipment. During the second consultation meeting the Claimant informed Mr Moncur that she wished to keep her laptop and Mr Moncur speak to Mr Snowden about that. I therefore found that Mr Snowden was simply contacting the Claimant because she had expressed a wish to keep her laptop and that this contact did not demonstrate that a final decision had been made with regards to the decision to dismiss the Claimant.

84. The documentary evidence confirmed, and the Claimant conceded in her oral evidence, that the Respondent had on several occasions invited her to apply for the position of Compliance Assistant in Stratford and she rejected the offer. The Claimant suggested this encouragement only happened after the Respondent was aware the Claimant was certain she would not relocate.

85. The Respondent however continued to invite the Claimant to apply for the position further to the Claimant indicating that she was not willing to relocate, and at any stage the Claimant

could have changed her mind and applied for the role. Had the Respondent's motive been to prevent the Claimant from obtaining this role in an effort to ensure she was dismissed from the Group so that she would not be able to give negative evidence to the Gambling Commission, it does not follow that they would continue to invite her to apply; the Respondent's encouragement for the Claimant to apply for the role continued throughout the appeal stage of her case.

86. Accordingly, I did not find that the decision to dismiss the Claimant was predetermined as suggested by the Claimant.

(b) Disadvantage:

87. Whilst the Claimant highlighted that she had multiple concerns over the consultation process, I did not accept that these concerns put the Claimant at a particular disadvantage, nor that the procedure was applied unfairly, as the evidence demonstrated that where the Claimant raised her concerns with the Respondent they were addressed throughout the consultation and appeal process, or they had not materially impacted on the Claimant's position.

(i) HR:

88. The Claimant raised a concern that she did not have the benefit of HR at her meetings, whereas she understood that other employees had. The Claimant confirmed that whilst she did not believe this had been done deliberately, she felt that a number of questions she had raised in the consultation meetings could have been answered immediately, had an HR representative been in attendance.

89. However, the documentary evidence in the bundle demonstrated that where the Claimant had raised questions that Mr Moncur was unable to address immediately, Mr Moncur had endeavoured to provide responses to those questions thereafter, either in emails or at a further consultation meeting. Furthermore, an HR representative was present in the Claimant's appeal meeting. The Claimant confirmed in her appeal meeting that because Mr Moncur had to go away to get answers for her, she felt this had elongated the process. However, this indicated to me that the consultation process was in fact effective, as the Claimant had been given the opportunity to ask questions, and someone was looking into the matter and responding to them. The fact that this took a little extra time did not render the process unfair and I did not find that the Claimant was materially disadvantaged by this.

90. The Claimant confirmed in her oral evidence that there were no jobs opportunities that she missed as a result of not having HR present at her consultation meetings. The main example the Claimant provided in order to demonstrate how the lack of an HR representative at her consultation meetings affected her was that she had been incorrectly advised that, had she chosen to take voluntary redundancy and left the company prior to reaching her full 15 years continuous service, this would not affect her redundancy payment. This advice was incorrect; however, this point was entirely academic as the Claimant did not choose to take voluntary redundancy. Presumably if the Claimant had opted to take voluntary redundancy this error would have been discovered and the parties would have addressed it at that stage. Ultimately, this incorrect advice had no practical effect on the Claimant and did not render the process unfair.

(ii) Deadline

91. The Claimant argued that a deadline to apply for the Compliance Assistant role was applied to her and not to any others. However, the Claimant accepted in her oral evidence that the Respondent had confirmed that deadlines were flexible. In any event, the Claimant was still being invited to apply for this role during the appeal process. Accordingly, the Respondent resolved any element of disparity between the Claimant and others in the process.

(iii) Meeting minutes:

92. The Claimant stated that the minutes of the meetings were inaccurate, however the evidence demonstrates the Claimant was given opportunities to highlight any inaccuracies at the beginning of the consultation meetings. The Claimant took up this opportunity and her concerns were discussed in the next consultation meeting. Had the Claimant felt that any details were either missing or inaccurate, she had the opportunity to write to the Respondent to raise that issue. The evidence demonstrated there were emails from the Claimant to the Respondent during the consultation process and the Respondent addressed concerns raised by the Claimant in those emails however the Claimant did not suggest in those emails that there were any serious issues with the minutes of the meetings.

Summary of the Consultation process

93. The correspondence indicates the Claimant was given, and accepted, the opportunity to address any concerns she had with the consultation process, and the Respondent then addressed the concerns in the following meeting or in subsequent emails or letters. The Claimant then had a further opportunity to raise any issues she had in her appeal, which she did. The notes of the appeal meeting and Mr Noble's lengthy and considered appeal outcome letter demonstrated that each of the points raised by the Claimant were considered and Mr Noble communicated his findings back to the Claimant.

94. The consultation process was open and lengthy, and the overall pattern of the process and correspondence demonstrated that the process allowed the Claimant to hear the information available and respond to that information.

95. I found that the Respondent's actions in the procedure for dismissal, viewed objectively, fell within the band of reasonable responses when considering the circumstances, including the size and economic resources available to it, and the process was not unfair as a result of the consultation.

Unfair selection

96. The Claimant argued that the Respondent classified the role of "Safer Gambling Co-ordinator" in Newcastle as redundant, however her job title had previously been Compliance Assistant, and there were two Compliance Assistant roles available in Stratford. The Claimant therefore felt that her job title was changed in 2019 in order to ensure that she would be included in the selection for redundancy that followed in the following year.

97. The parties agreed that in 2019 the Claimant's job title changed, however her actual role remained the same. The Claimant argued that as part of the restructure there were two new Compliance Assistant roles in Stratford and as this was the role she had carried out, she should have been allowed to apply for one of those roles at the very start of the process. Essentially, she argued this rendered her selection for redundancy unfair.

98. The Respondent's evidence was that it had decided to earmark those Compliance Roles for people with compliance experience who were located in Stratford before opening the vacancy up to others in the Group in different locations.

99. I found that regardless of the Claimant's actual job title, the effect of the Respondent's decision to restructure was that the Respondent's need for compliance staff in Newcastle would cease. Whether the Claimant had retained her initial job title of Compliance Assistant or not, the need for anyone carrying out a compliance role in Newcastle had ceased, as the Respondent's requirements for employees carrying out this role "at a particular place" (i.e. Newcastle, in this case) was expected to cease permanently.

100. I did not find that it fell outside of the band of reasonable responses for the Respondent to choose to offer the Stratford Compliance Assistant roles to existing employees who were already located in Stratford first before offering those roles to people located outside of Stratford.

101. I accept the Respondent could have initially offered the Compliance Assistant roles to employees from all the other locations, including the Claimant in Newcastle, rather than first offering the roles to the two employees located in Stratford. However, given the fact that Newcastle is over 300 miles from Stratford, and that the role was not an executive position and unlikely to attract a relocation package due to the limited revenue available during the lockdown, I found that it was also reasonable for the Respondent to decide to offer the roles to employees located in Stratford first. Accordingly, this action was within the band of reasonable responses.

102. I therefore did not find that the Respondent's actions in selecting the Claimant for redundancy fell outside of the band of reasonable responses.

(b) <u>Alternative Employment</u>

103. The Claimant asserted that Respondent made insufficient efforts to offer her alternative employment because;
    - 103.1. the Compliance Assistant role in Stratford was only made available to her once she had made it clear she would not relocate;
    - 103.2. upon discovering a suitable role on the Group's website, the Claimant was informed this was simply a mistake resulting in their being no suitable alternative roles; and,
    - 103.3. she felt she had to chase the Respondent about suitable alternative roles.

104. As already detailed above, I found that the Respondent encouraged the Claimant to consider applying for the role of Compliance Assistant. The Claimant stated she had lost trust and confidence in the Respondent and this offer was therefore not meaningful. However, even in the Appeal meeting Mr Noble asked the Claimant if she would reconsider applying if the Respondent could reconsider a relocation package for her. As such, the Respondent did not appear to be aware that the Claimant had lost trust and confidence and the Claimant conceded in oral evidence that she may not have communicated this to the Respondent.

105. As outlined above however, the legal test is not whether the Claimant had lost trust and confidence but whether the Respondent's actions fell within band of responses open to a reasonable employer; I found that they did. During the consultation process the Claimant was given the opportunity to apply for the role of Compliance Officer. The Respondent did not know the Claimant had lost trust and confidence, and even if the Respondent had known this, it

continued to invite the Claimant to apply alongside words of encouragement and provided the Claimant with additional time to do so. The Claimant could have changed her mind at any time.

106. The Claimant also asserted that the Respondent had failed to highlight roles that were suitable for her, referring to the Croupier role she found on the Group's website. Mr Moncur confirmed that having looked into this matter with HR it was clear this role had been accidently left on the website, and that given the fact that all of the Respondent's casinos had been closed due to the national lockdown the Group did not need a croupier on the Casino floor. What is clear from this event is that further to the Claimant requesting information regarding an available role, the Respondent undertook research into her request and reverted with is findings, demonstrating that the Respondent was engaging in the consultation process to assist with finding alternative employment.

107. I found that the Respondent's actions in relation to finding alternative employment for the Claimant were reasonable.

108. On 9 June 2020, the Respondent sent the Claimant an email which included a job opportunities document. Roles that were available in Newcastle were made known to the Claimant. Alternative roles were highlighted during the consultation process and the Claimant was permitted to, and even encouraged to, apply for them. The Claimant was able to ask questions of Mr Moncur throughout the process about opportunities and Mr Moncur took action in looking into those questions and responding to the Claimant. Whilst the Claimant asserts that Mr Moncur did not respond adequately as he was unable to confirm whether the position of Security Officer was filled or not, the Claimant also had a part to play in seeking alternative employment. The Claimant was aware of the Security Officer role, and the Respondent did not prevent her from chasing the answer to the question or making an application for the same regardless of whether Mr Moncur reverted to her with confirmation as to whether the role had been filled or not. The Claimant did not take either action.

109. Accordingly, I found that the actions of the Respondent in making efforts to find alternative employment for the Claimant were reasonable.

Conclusion

110. In summary, found that the Respondent followed a fair procedure, and its actions throughout the process were within the band of reasonable responses in the circumstances.

111. As a result, I am satisfied the Respondent acted reasonably in treating redundancy as a sufficient reason for dismissing the Claimant, and the Claimant's claim for unfair dismissal is dismissed.

112. Had I found that the process was procedurally unfair however, I would have gone on to consider the chances that the Claimant would have been dismissed even if the process had been fairly adopted in accordance with Polkey.

113. In the circumstances of this claim, and considering the Claimant's family circumstances at the time, I would have found it incredibly unlikely that the Claimant would have relocated to Stratford. As such, any compensatory award given would have been reduced by 100% to reflect the fact that the Claimant would still have been dismissed by reason of redundancy.

Case Number: 2502297/2020

EMPLOYMENT JUDGE NEWBURN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 2 October 2021