



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109251/2021

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Conference call on 28 June 2021

Employment Judge S MacLean

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Ms L O' Donnell

**Claimant
Represented by:
Mr G Bathgate,
Solicitor**

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Vascutek Limited (t/a Terumo Aortic)

**Respondent
Represented by:
Mr W Rollinson,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The complaints of discrimination on the grounds of age and disability having been withdrawn by the claimant, are dismissed under rule 52 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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ORDER OF THE EMPLOYMENT TRIBUNAL

Under rule 29 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, having considered the views of the parties and the requirements of the overriding objective in rule 2 of the Tribunal Rules I make the following order.

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1. The next hearing will be a three day final hearing in person before an Employment Judge sitting alone on **13, 14 and 15 September 2021** or such other dates as the listing section agrees with the parties.

E.T. Z4 (WR)

2. The parties shall liaise so that the respondent can prepare a single set of documents in chronological order with numbered pages incorporating all documents intended by both parties to be referred to at the final hearing.
3. No later than **seven days before the final hearing** the respondent shall provide the claimant and the Tribunal with the required sets of productions.
4. If any party wishes to apply for further directions or to vary the orders set out above, they must send a written application to the tribunal office with a copy to the other party in accordance with rule 30 of the Tribunal Rules.

NOTE AND REASONS FOR THE JUDGMENT AND ORDER

10 Withdrawal of Claims

1. Mr Bathgate confirmed that the claimant was withdrawing her complaints of discrimination on the grounds of age and disability. It was agreed that these claims would be dismissed under rule 52 of the Tribunal Rules.

Claim Form

2. The remaining claim of unfair dismissal will proceed to a full hearing. Mr Bathgate confirmed that the claimant did not dispute that a redundancy situation existed. She considered that the manner in which the redundancy process was carried out was unfair and she should not have been isolated into a pool of one. The claimant still seeks reinstatement as her primary remedy.

Response Form

3. The respondent admits that the claimant was dismissed but asserts that the reason was redundancy and that having regard to this reason and to its size and administrative resources the respondent acted reasonably in treating this reason as a sufficient reason for dismissing the claimant and that dismissal was fair and reasonable in the circumstances. If there was a procedural flaw the respondent relies on *Polkey v A E Dayton Services Ltd [1987] IRLR 503* as it contends that the claimant would be dismissed in any event.

Remedy

4. The claimant seeks reinstatement. She has recently found new employment. A schedule of loss will be produced within the next 21 days.

The Issues

- 5 5. The issues to be determined by the Tribunal are:
- a. Taking into account the size and administrative resources of the respondent, did it act reasonably in treating redundancy as sufficient reason for dismissing the claimant having regard to equity and the substantial merits of the case in accordance with section 98(4) of the Employment Rights Act 1996?
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 - b. If the claimant was unfairly dismissed, is it appropriate to order her reinstatement or re-engagement.
 - c. If the claimant was unfairly dismissed and reinstatement or re-engagement are not appropriate, how much compensation, if any, does the Tribunal consider it would be just and equitable in all the circumstances to award to the claimant?
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 - d. If the claimant was unfairly dismissed, should any award of compensation be adjusted in light of the fact that even if the Tribunal considers there was a flaw in the process adopted by the Respondent, the claimant would have been dismissed in any event and the principles contained in *Polkey v A E Dayton Services Ltd [1987] IRLR 503*?
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Documents

6. Mr Rollinson confirmed that the respondent would be responsible for preparing the joint set of productions. The representative will liaise in this regard.
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7. A set of the productions should be sent to the Tribunal's office no later than **seven days before the final hearing.**

Witnesses

- 8. The respondent will call two witnesses: George McNeil, Dismissing Manager and Robert Welsh, Appeal Manager. The claimant will give evidence on her own account. Norman King, TU representative will also give evidence.
- 5 9. Evidence will be given orally.
- 10. No witness orders were requested.

Final Hearing

- 11. The final hearing will take place in person before an Employment Judge sitting alone.
- 10 12. Three days should be allocated. **The preferred availability is 13, 14 and 15 September 2021.** I have allocated these dates subject to confirmation from the listing section. As currently advised the parties are also available on 1, 2 and 3 September 2021. A separate notice of hearing will follow.

15 Employment Judge: Shona MacLean
Date of Judgment: 28 June 2021
Entered in register: 30 June 2021
and copied to parties