EMPLOYMENT TRIBUNALS

Claimant: **Mr J Chalko**

Respondent: **Britannia Hotels Limited**

Heard on: **14th October 2021 by CVP**

Before: **Employment Judge Pritchard**

Representation
Claimant: In person
Respondent: Mr R Wyn Jones, counsel

These written reasons for the Tribunal's judgment sent to the parties on 9 November 2021 are given pursuant to the Claimant's request dated 23 November 2021.

REASONS

Issues

1. The Claimant claimed unfair dismissal.

2. The issues were discussed with the parties at the outset of the hearing and can be described as follows:

   2.1. Can the Respondent show the reason for the dismissal and that it was for the potentially fair reason of redundancy?

   2.2. If so, was the dismissal fair or unfair having regard to section 98(4) of the Employment Rights Act 1996?

   2.3. In particular:

      2.3.1. Was the Claimant fairly selected for redundancy?

      2.3.2. Was the Claimant given advance warning of the potential redundancy?

      2.3.3. Did the Respondent enter into meaningful consultation with the Claimant?

2.3.4. Was any alternative available employment offered or made known to the Claimant so that he could apply for it?

Findings of fact

3. The Claimant commenced employment with the Respondent in February 2016 and at relevant times he was employed as the General Manager of the Airport Inn Gatwick, just one mile from the airport itself. It is one of three hotels in the Gatwick area within the Respondent's national hotel network. Its business at Gatwick is heavily reliant on air-passengers using the hotel.

4. As is well known, the country went into national lockdown in March 2020 in consequence of the Covid 19 pandemic which required the closure of all hotels nationwide. This adversely affected the Respondent's business. The Claimant and other employees in the business were placed on furlough.

5. On 30 June 2020 the Respondent wrote to all employees at its three Gatwick hotels warning of the potential risk of redundancies. The rationale for such potential redundancies was enclosed with the letter. The Tribunal was told that 100% of employees at one Gatwick hotel were made redundant. At a second Gatwick hotel 80% of employees were made redundant. It appeared that the Airport Inn might not have been quite so badly affected but the effect of the pandemic on its business there was nevertheless significant.

6. The Claimant attended a consultation meeting with Nicola Fletcher on 1 July 2020. The reason for the potential redundancies was discussed with the Claimant who was asked if he had any immediate thoughts or suggestions for options.

7. On 6 July 2020 the Claimant was formally notified that his position was at risk of redundancy. The Claimant was invited to attend a further consultation meeting. The consultation meeting was postponed at the Claimant's request and held on 13 July 2020 with Nicola Fletcher. In advance of the meeting, the Claimant was informed of positions available on the Respondent's website and told that if he wished to apply for any of those positions, it could be discussed at the consultation meeting.

8. At the consultation meeting, the Claimant stated that he was flexible and would be prepared to change his job role. However, as he told the Tribunal, he had reservations about stepping down in grade because he felt it might not be favourable when applying for new employment.

9. A further consultation meeting took place on 20 July 2020. In advance of the meeting, the Claimant was told the purpose of the meeting: in particular, to discuss any views and suggestions he might have. The Claimant was warned, in advance, that if alternatives to redundancy could not be reached then there was the possibility of his employment being terminated.

10. At the consultation meeting, Nicola Fletcher discussed with the Claimant his suggestion that he might be prepared to take a wage reduction or change his role to Supervisor or Operations Manager. However, these alternative roles were not available within the business. The Claimant confirmed that he did not wish to apply for any of the vacant roles. Nicola Fletcher explained to the Claimant that he was to be made redundant, the redundancy pay he would

receive together with notice monies. A letter to the Claimant confirmed the outcome. He was to remain employed but on furlough during his notice to end on 10 September 2020.

11. By letter dated 27 July 2020, the Claimant appealed against the decision to make him redundant. Lisa Jackson, Group HR manager, held and appeal hearing on 14 August 2020. The decision to dismiss the Claimant by reason of redundancy was upheld. It is clear from the outcome letter that the Claimant's points of appeal had been fully and conscientiously considered.

Applicable law

12. Under section 98(1) of the Employment Rights Act 1996 it is for the employer to show the reason for the dismissal and that it is either for a reason falling within section 98(2) or for some other substantial reason of kind such as to justify the dismissal of the employee holding the position she held. Redundancy is a potentially fair reason falling within section 98(2).

13. Section 139(1)(b)(i) of the Employment Rights Act 1996 provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the employer's business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

14. In Murray v Foyle Meats Ltd [1999] ICR 827, Lord Irvine approved of the ruling in Safeway Stores plc v Burrell [1997] ICR 523 and held that section 139 of the Employment Rights Act 1996 asks two questions of fact. The first is whether there exists one or other of the various states of economic affairs mentioned in the section, for example whether the requirements of the business for employees to carry out work of a particular kind have ceased or diminished. The second question, which is one of causation, is whether the dismissal is wholly or mainly attributable to that state of affairs.

15. It is the requirement for employees to do work of a particular kind which is significant. The fact that the work is constant, or even increasing, is irrelevant; if fewer employees are needed to do work of a particular kind, there is a redundancy situation. See McCrea v Cullen and Davison Ltd [1988] IRLR 30. Thus, a redundancy situation will arise where an employer reorganises and redistributes the work so that it can be done by fewer employees.

16. There is no requirement for an employer to show an economic justification for the decision to make redundancies; see Polyflor Ltd v Old EAT 0482/02.

17. Where the employer has shown the reason for the dismissal and that it is for a potentially fair reason, section 98(4) states that the determination of the question whether the dismissal was fair or unfair depends on whether, in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and must be determined in accordance with equity and the substantial merits of the case.

18. In Williams v Compair Maxam Ltd [1982] ICR 156 the Employment Appeal Tribunal laid down the matters which a reasonable employer might be expected to consider in making redundancy dismissals:

18.1. Whether the selection criteria were objectively chosen and fairly applied;

18.2. Whether the employees were given as much warning as possible and consulted about the redundancy;

18.3. Whether, if there was a union, the union's view was sought;

18.4. Whether any alternative work was available.

19. However, in determining the question of reasonableness, it is not for the Tribunal to impose its standards and decide whether the employer should have behaved differently. Instead, it has to ask whether the dismissal lay within the range of conduct which a reasonable employer could have adopted. The Tribunal must also bear in mind that a failure to act in accordance with one or more of the principles set out in Williams v Compair Maxam will not necessarily lead to the conclusion that the dismissal was unfair. The Tribunal must look at the circumstances of the case in the round.

20. Employers have a great deal of flexibility in defining the pool from which they will select employees for dismissal. In Thomas & Betts Manufacturing Ltd v Harding [1980] IRLR 255 it was held that Employers need only show that they have applied their minds to the problem and acted from genuine motives. As was said in Capita Hartshead Ltd v Byard [2012] IRLR 814, provided the employer has genuinely applied its mind to who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.

21. If the issue of alternative employment is raised, it must be for the employee to say what job, or what kind of job, he believes was available and give evidence to the effect that he would have taken such a job: that, after all, is something which is primarily within his knowledge: Virgin Media Ltd v Seddington and Eland UKEAT/0539/08/DM

Conclusion

22. The Respondent has clearly shown the reason for the Claimant's dismissal, namely, that it had a reduction in the requirement for senior managers, and a General Manager in particular, at the hotel where the Claimant worked. The hotel itself was closed and its business operations seriously disrupted and adversely affected. At the time of the Claimant's dismissal there was no light at the end of the tunnel and it could not be foreseen when, or if, the hotel might reopen. The Tribunal is unable to accept the Claimant's contention that the Respondent simply wanted to be rid of him: there was simply no evidence before the Tribunal to support that contention.

23. The Tribunal carefully considered the redundancy procedure followed in this case and was unable to discern anything which would suggest that the dismissal was unfair. The Claimant was the only General Manager at the hotel and the Respondent no longer required a General Manager at that hotel – or any senior manager. The Claimant was in essence in a pool of one and the question of selection from a pool did not arise. The Claimant was given advance warning of the risk of redundancy. Nicola Fletcher held three consultation

meetings with the Claimant: there was no evidence to suggest these were anything other than genuine discussions with the Claimant to explore ways of avoiding his redundancy if that could be achieved. The Claimant was informed of alternative employment which was not at the senior management level he held. No criticism can be made of the Claimant for not wishing to apply for the vacant positions, but neither can the Respondent be criticised for offering them. The Tribunal noted that the Respondent even made the Claimant aware of a vacancy after he had been given notice of redundancy but before the end of his employment. This reinforced the Tribunal's view that the Respondent had no desire to be rid of the Claimant and that his dismissal was the unfortunate consequence of a redundancy situation. The evidence did not suggest that the Claimant's suggestions were simply dismissed out of hand; rather, the evidence suggests that they were given consideration by the Respondent but they were simply unviable.

24. The Tribunals conclusions in relation to the further complaints of unfairness alleged by the Claimant are as follows:

    24.1. That the very first email invitation was simply a template, did not contain a hotel name and had incomplete paragraphs. In this regard, the Claimant appeared to demand a more detailed document than legally required by the standards of the reasonable employer. The Claimant clearly knew of the proposal to make redundancies and that he was affected by that proposal.

    24.2. The Claimant complained that he had insufficient time to prepare for the first consultation meeting which, he had been led to believe, was simply an informative meeting. He complained that he was unprepared to answer the questions he was asked. However, the Claimant was simply asked for his initial reaction and whether, at this stage, he had any suggestions to make. It was clear there would be further consultation giving the Claimant the opportunity to consider any points he wished to put forward. Indeed, that is what happened.

    24.3. The Claimant complained that the Respondent did not know that he was, in title, General Manager rather than Operations Manager. The evidence before the Tribunal was that the duties of Operations Manager and General Manager were very similar, a General Manager being a slightly more senior position. Regardless of any paperwork held on file as to the Claimant's correct job title, the simple fact is that the Respondent no longer required any senior manager, whether described as an Operations Manager or a General Manager.

    24.4. The Claimant complained that he had to chase for information regarding holiday and notice entitlement should his employment end by reason of redundancy. The Claimant might have had a legitimate complaint in this regard, although the Tribunal made no findings in relation to it, but this did not affect in any way the fairness of the redundancy procedure followed by the Respondent.

    24.5. The Claimant complained that he was not provided with a written redundancy procedure. The Respondent says that it had regard to its own redundancy policy contained within the employee handbook. The Claimant suggested that he should have been subject to a

redundancy policy applied by his former employer, before his employment transferred to the Respondent under the Transfer of Undertakings Regulations. Firstly, there was no evidence to suggest that the Respondent's policy was not followed. Secondly, the Claimant was unable to identify any detriment he might have suffered by reason of the Respondent following its own policy rather than that of his former employer: indeed, the Claimant did not refer the Tribunal to the terms of the redundancy policy he relied on. The Tribunal was satisfied that the procedure followed did not lead to unfairness in this case.

24.6. Although the Claimant had not pleaded it or previously complained about it, he referred the Tribunal to a document within the bundle showing a vacancy for a Senior Manager in the Respondent's SE region. However, that document was undated. Ms Fletcher suggested that it may have been left on the website and overlooked because of the COVID working situation. The Tribunal accepted Ms Fletcher's clear evidence that she was entirely unaware of any such vacancy at the time.

24.7. The Claimant sought to persuade the Tribunal that his dismissal must have been unfair because a Mr Slatter, Bar Manager, had been retained in employment despite being at risk of redundancy. The Tribunal was unable to draw any inferences from this evidence. Mr Slatter held a different position from the Claimant and the Tribunal found it highly likely that his services were retained because the Respondent wished to retain a Bar Manager. It did not assist the Claimant in his claim.

25. For these reasons, the Tribunal concluded that the Claimant had not been unfairly dismissed.

Employment Judge Pritchard

Date: 26th November 2021