



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant** Mr B Meunier

**Respondent** St Michael's Hospice (North Hampshire)

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT** Bristol (by video hearing service). **ON** 17 and 18 November 2021

**EMPLOYMENT JUDGE** K Halliday

### **Representation**

**For the Claimant:** in person

**For the Respondent:** Mr Sonaïke, of Counsel

### **JUDGMENT**

The judgment of the tribunal is that the Claimant's claim for unfair dismissal does not succeed and is dismissed.

### **REASONS**

1. In this case the claimant, Mr Meunier who was dismissed by reason of redundancy, claims that he has been unfairly dismissed. The respondent contends that the reason for the dismissal was redundancy, and that the dismissal was fair.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by video hearing service. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

### **Preliminary Matters and Issues**

3. A joint application to increase the size of the bundle to 247 pages was made and agreed.
4. The issues for the Tribunal to decide were discussed including whether the claimant was relying on the fact that his employment should have transferred to a third party on an outsourcing of IT services and whether “some other substantial reason” was being relied on as an alternative fair reason by the respondent. After a short adjournment the claimant confirmed that he did not wish to pursue the line of argument that his role had potentially transferred pursuant to an outsourcing arrangement and the respondent confirmed that it was not defending the claim on the alternative grounds pleaded of “some other substantial reason”. The issues to be decided were therefore agreed as follows:
  - 4.1. What was the reason for dismissal? The respondent asserts that it was a reason related to redundancy which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.
  - 4.2. Is the definition of redundancy satisfied as set out in section 139 Employment Rights Act that the requirements of the business to carry out work of a particular kind and/or for employees to carry out work of a particular kind at the place where the employee was employed have ceased or diminished or are expected to cease or diminish: the claimant asserts that his role was not genuinely redundant as the need for IT services remains.
  - 4.3. Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant, considering in particular, whether:
    - 4.3.1. the respondent adequately warned and consulted the claimant;
    - 4.3.2. the respondent adopted a reasonable selection decision, including its approach to a selection pool;
    - 4.3.3. the respondent took reasonable steps to find the claimant suitable alternative employment?
  - 4.4. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
  - 4.5. Did the respondent adopt a fair procedure? The claimant asserts it was not fair and challenges the fairness of the procedure in the following specific respects;

- 4.5.1. the application of the initial “selection matrix” which identified those at risk was unfair;
- 4.5.2. the pool applied was incorrect;
- 4.5.3. consultation was not transparent;
- 4.5.4. all information was not shared with him and specifically he was not given a copy of the 2019 IT strategy;
- 4.5.5. none of the alternative roles offered were IT related.

4.6. If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

5. The documents that I was referred to during the hearing are in a bundle of 247 pages, the contents of which I have noted. I have heard from the claimant, and I have heard from Mr Iain Cameron the respondent’s Chief Executive; Mr Chris Griffiths the respondent’s Commercial director and the claimant’s line manager; and Mr Burghes a Trustee of the respondent on behalf of the respondent.
6. There was a limited degree of conflict on the evidence and all witnesses (including the claimant) were credible and consistent in their accounts. Having heard the witnesses give their evidence I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

### **Factual Summary**

7. The claimant, Mr Meunier was employed by the respondent St Michael’s Hospice (Northern Hampshire) from 18 September 2006 initially as Information Technology Manager then as Head of ICT and Technical Services, until his employment ended by reason of redundancy on 13 August 2020.
8. In or around July 2020 when the redundancy situation arose, the respondent had approximately 110 employees and a turnover of £5 million and had professional HR support. The respondent has approx. 10 or 11 retail outlets which support its fund-raising efforts.
9. The claimant has made a significant contribution to the development and support of the respondent’s IT systems since the start of his employment and no performance issues have been raised with him. He was the only employee employed in the IT department and at the time of the redundancy was working 32 hours (.85 FTE) and with on costs, cost the respondent in the region of £47k to £50k.
10. The claimant’s line manager was the Chief Executive until 2016 when he began reporting to Judith Astles, the Finance Director. Ms Astles commissioned an IT audit by Complete IT (CIT) in 2016. The claimant does not accept the findings

of that report, which identified that the IT resource in place was the wrong mix for the organisation but I find that no action was taken as a consequence of the audit so it is of limited relevance. A second audit was undertaken by Vermont Systems in or around April 2019, but no copy of the audit was available to the Tribunal. The claimant relies on this fact in support of his contention that there was a hidden agenda in reaching the decision to make the claimant's position redundant, but I accept the respondent's explanation that no copy has been retained and do not draw any adverse inference from this fact. Further no action was taken by the respondent in reliance on any findings of that report in 2019 or the early part of 2020 so I do not find that the detail of this document is relevant to this claim.

11. In January 2020, Mr Chris Griffiths, Commercial Director, became the claimant's line manager.
12. Following the pandemic and the lockdown in late March 2020 the income of the respondent was severely impacted and a drop in income of £1 million and a deficit of £700k for the financial year ending 31 March 2021 was predicted. The board mandated the Chief Executive to make 10% cost savings without impacting on clinical services and this resulted in a review of non-clinical staff. I find that in May 2020, Mr Chris Griffiths along with other senior managers was asked to review non-clinical positions where savings could potentially be identified and the claimant's role was one of 13 roles identified.
13. A matrix was prepared which scored any positions identified as ones where savings could potentially be made against predetermined criteria of cost; project work; workload; and dispersion/combination/SLA. Each of the 13 potentially affected positions was scored in order to decide if the proposed redundancy of that position should be progressed. I find that this was prepared in or around May 2020 as the respondent states and that the claimant's position was not added to it at a later stage as suggested by the claimant.
14. The respondent's evidence on how they identified and scored the roles that could potentially be at risk was not entirely consistent. In relation to the projects score, Mr Griffiths did not have a clear recollection of current projects to justify the allocation of the score, but the claimant did accept in his evidence that based on the respondent's criteria (which he considered to be flawed) the scores were correct other than in relation to workload which he maintains was increasing. On balance therefore, I accept that the scores were fairly applied,
15. The claimant's position scored 30 which was over the cut-off score and Chris Griffiths, the claimant's line manager, had concluded that the claimant's duties could potentially be shared amongst other staff with existing external support. A number of other roles were identified where potentially savings could be made.

16. On 3 July 2020 an Extra-ordinary Finance and General Purpose Committee Meeting was held at which a proposal to outsource IT services was considered. The proposal was set out in a paper prepared by Chris Griffiths which set out the proposed costs from three suppliers. I find that this paper focuses on improvements to IT Services rather than cost savings. The Committee consisting of four trustees, including Mr Burghes, gave their approval to negotiate an outsourcing contract. The claimant's position was discussed in this meeting and it was noted that it was hoped that he may take voluntary redundancy but that this could not be guaranteed. The issue of knowledge transfer, the fact that the existing provider had the ability to do the work independently and a retention bonus were all discussed. Reference was also made to the restructuring and reorganisation of the whole organisation with a view to making savings and it was agreed to combine both projects, namely the restructure and the outsourcing.
17. I heard evidence from Mr Griffiths that at the time of the Committee meeting, he was not aware that TUPE might apply to the outsourcing, but once he received advice to this effect, the outsourcing become too expensive and was not progressed and I accept his evidence on this point.
18. On 14 July 2020 the respondent announced the proposed restructure due to the need to make cost savings and invited staff to apply for voluntary redundancy. The claimant did not apply.
19. On 22 July 2020, those affected staff identified using the matrix, including the claimant, were invited to a meeting to notify them that their roles were being placed at risk of redundancy due to the need to make cost savings. A number of other cost saving initiatives were also identified including the cancellation of all estate project and capital work planned for the year. The respondent stated that it was proposed to make 9 roles (7 incumbent staff) redundant in the fund-raising, retail, voluntary services and IT teams, in addition to the voluntary redundancies.
20. By letter dated 22 July 2020, the claimant was invited to a first consultation meeting which was held on 23 July 2020 and chaired by Chris Goddard with HR support from Sylvia Goddard, During this meeting the claimant was advised that the restructure was a cost saving exercise; that capital projects and expenditure had been put on hold; and that the work of the head of ICT could be absorbed by others within the organisation with support from external suppliers as and when required. It was further clarified that Chris Griffiths and Iain Cameron would primarily pick up desk top issues and Chris Griffiths would pick up configuration changes and that Chris Griffiths would be the main IT support desk. The claimant was also provided with a current vacancy list.
21. On 27 July 2020, the claimant sent detailed comments to the respondent.

22. The claimant was invited to a second consultation meeting initially scheduled for 30 July 2020 and postponed at the claimant's request until 4 August 2020.
23. On 28 July 2020 the respondent e-mailed a response to the claimant's queries, including a more detailed breakdown of where the claimant's duties were dispersed. It was also clarified that it was not the respondent's intention to enhance or extend the existing contracts and therefore that TUPE would not apply. The claimant agreed in his evidence that it was proposed that the bulk of his role (desktop support) would be undertaken by Chris Griffiths and that this is what did in fact happen. Other aspects of his role were undertaken by the individuals identified in the respondent's response of 28 July 2020 although in the claimant's view they were managing contracts and external providers and did not themselves have relevant technical expertise. He also acknowledged that these management tasks were not time consuming. I therefore find that there was no transfer of any significant part of his duties to a third party. I accept Mr Griffiths evidence that patch management (which I understand to be automated updates) was transferred to an existing IT provider Hampshire Business but that this is a discrete service and using an external provider was considered to be a safer option than relying on internal resource.
24. On 29 July 2020 the claimant sent a further email asking how employees were selected for redundancy and how to appeal. This email was responded to the same day confirming that selection criteria were not applicable as the claimant was in a unique role and confirming that an appeal would be offered to redundant employees.
25. There were further email exchanges and requests for additional information from the claimant on 29 and 30 July 2020 and the respondent confirmed that selection criteria did not apply as the claimant's role was unique, and I find that this was the case.
26. The second consultation meeting was held in 4 August 2020 by Chris Griffiths with HR support from Sylvia Goddard. The claimant made a number of suggestions to avoid his redundancy in that meeting namely; reducing his hours to 3 days a week; reduce the number of Directors/managers or days worked; reduce the headcount in unaffected departments (e.g. HR and Finance); in retail not retaining both Managers and Assistant Managers.
27. By letter dated 6 August 2020 the claimant was invited to a third consultation meeting on 12 August 2020. On the same day the claimant was sent an email responding to the suggestions he had raised. The respondent:
- 27.1. advised the claimant that the required cost savings of circa £50k would not be made if he reduced his days by one day;
  - 27.2. asked the claimant for more details off the manager/director roles he was suggesting could be consolidated

- 27.3. confirmed that cost savings in other departments had already been considered as evidenced by the “selection matrix” based on salary cost, project work, workload, ability to disperse tasks; and
- 27.4. confirmed that both managers and assistant managers would be required to support the re-opening of the shops
28. The respondent also explained that the definition of redundancy included not only the situation where the tasks had disappeared but the situation where the business no longer needed employees to undertake those tasks.
29. On 10 August 2020 the claimant clarified that he believed the roles of Commercial Director and Director of People and Culture could be consolidated. He stated his belief that the intention to close the IT department was personal.
30. The suggestion of consolidation of the roles of Commercial Director and Director of People was considered by Mr Iain Cameron who concluded that a combined role would not be viable.
31. The third consultation meeting was held on 12 August 2020. The claimant queried the additional costs of using external providers for additional IT support and Mr Griffiths confirmed there would not be any as the tasks would be undertaken internally. The claimant re-iterated his concern that there was not sufficient expertise internally and there was further also discussion of outsourcing. Mr Griffiths confirmed that this was not personal and that the claimant’s role was one of 10 that was at risk
32. The claimant did not apply for any of the alternative positions, (which were not in IT and were on lower salaries) and he was under no obligation to do so whether or not he had the skill set to do them.
33. At the fourth individual consultation meeting the claimant was notified of the termination of his employment by reason of redundancy with effect from 13 August 2020. This was confirmed to him by letter the same day and appropriate notice and redundancy payments were made to him. The claimant was not required to work his notice period.
34. The claimant was offered the right to appeal against his dismissal which he exercised and was invited to an appeal hearing which was held on 3 September 2020. The appeal hearing was held by Mr Burghes, a Trustee, supported by Rowena Prenderville, HR Consultant. The appeal considered the grounds of appeal and was not a re-hearing.
35. The claimant’s appeal grounds were clarified with the claimant and summarised as:
- 35.1. Lack of technical skills that will remain in the business.

- 35.2. Additional costs were not considered.
- 35.3. Redundancy was personal (a result of an altercation with the Director of Finance).

36. The claimant also asked if Mr Bughes was impartial and had participated in any of the outsourcing meetings and Mr Burghes confirmed that he had not.

37. The appeal points were discussed during the appeal hearing and Mr Burghes subsequently made further enquiries about IT costs, the level of expertise within the respondent to deal with IT issues, the use of Hampshire Business Computers and when and why outsourcing was considered. The claimant's appeal was not upheld and the appeal outcome was notified to the claimant by letter dated 9 September 2020.

### **Law and Conclusion**

38. Having established the above facts, I now apply the law.

39. The reason for the dismissal was redundancy which is a potentially fair reason for dismissal under section 98 (2) (c) of the Employment Rights Act 1996 ("the Act").

40. The statutory definition of redundancy is at section 139 of the Act. This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) "the fact that the requirements of (the employer's) business for employees to carry out work of a particular kind, or 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".

41. This definition is satisfied in this case as overall the number of employees reduced and the claimant's role of IT manager was not replaced, so I accept a genuine redundancy situation had arisen. The claimant accepted that due to the costs saving required redundancies were needed.

42. I have considered section 98 (4) of the Act which sets out the test of fairness and which provides "... 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 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 – (b) shall be determined in accordance with equity and the substantial merits of the case".

43. I am satisfied that in this case the decision of the respondent to remove the post of IT manager was within the range of decisions that an employer could



reasonably have applied. The claimant has identified that he believes this decision to be illogical due to the complex nature of his role and the fact that there was not sufficient expertise elsewhere in the organisation. Whilst I accept that it may be an unusual decision, the 2016 audit and the proposal to outsource confirm that the then current IT provision was already under review and I am satisfied that the respondent did genuinely remove the claimant's role and reallocate his duties and that this was a decision that they were as an organisation entitled to take and was within the range of reasonable approaches on this occasion.

44. The respondent's case is that the claimant's role was unique and he was therefore appropriately in a pool of one and selection criteria did not apply. The claimant has submitted that essentially his role was "merged" with Chris Griffith's role as Commercial Director and they should therefore have been pooled together. I conclude that the claimant's role was unique and although Mr Griffiths picked up a significant part of the day-to-day IT issues, these duties were in addition to his existing duties and his substantive post remained unaffected. Other parts of the claimant's role were picked up by other colleagues. It was therefore within the range of reasonable approaches to redundancy pools to place the claimant in a pool of one. Selection criteria to be applied to choose between two employees in the same or a similar role are therefore not relevant here. Likewise, to the extent suggested by the claimant, I do not find that he should have been pooled with any of the other employees who took on some specific elements of his role
45. The claimant also alleges that the decision to make his role redundancy was personal. I do not find this to be the case although it is understandable that having invested time, energy and loyalty in the respondent, this may be how it feels to the claimant. I have not found that the incidents in 2016 (or indeed 2019) are relevant to the redundancy process. I further conclude that the fact that the respondent considered outsourcing (whether to improve services or to make costs savings) does not in itself affect the fairness of the subsequent decision either that redundancies needed to be made or that the claimant's role was one of those to be placed at risk. I am satisfied that the redundancy arose in the context of the significant financial pressures facing the respondent during the pandemic and that the claimant's role was not the only one made redundant.
46. I am also satisfied that the claimant was adequately warned and consulted about his redundancy. He attended three consultation meetings in addition to the initial announcement meeting and the final meeting and was also offered an appeal. The respondent considered and responded to all his suggestions. To the extent that the claimant suggests that further information that was not provided, (specifically the 2019 IT review) would have enabled him to avoid the redundancy or challenge its fairness, I do not conclude that this is the case.

47. I am also satisfied that there were no suitable alternative positions available; that the claimant was informed of, but did not apply for, alternative available positions; and that the respondent was under no obligation to create a role for him.
48. The claimant also challenges the fairness of the appeal on the basis that Mr Burghes had attended the F& GP meeting on 3 July 2020 and had therefore been involved in the IT outsourcing. I have found that the outcome of the 3 July meeting was to give approval to negotiations to be undertaken and that these did not progress once the impact of TUPE was understood. I do not find therefore that Mr Burghes attendance at this meeting meant that he was not able to (or in fact did not) consider the claimant's appeal in an impartial manner. The decision to use a trustee in this case, given Mr Griffith and Mr Cameron's involvement in the redundancy process, is a fair and reasonable one.
49. In relation to the decision that the claimant should not work his notice, I do not find that there was any unfairness in the respondent electing to pay the claimant in lieu of notice notwithstanding that there was no contractual right to do so,
50. In reaching this decision I have also considered the cases of Williams & Ors v Compair Maxam Ltd [1982] IRLR 83; Safeway Stores v Burrell [1997] IRLR 200 EAT, and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. I take these cases as guidance, and not in substitution for the provisions of the relevant statutes.
51. I therefore conclude that the claimant's dismissal by reason of redundancy was fair and reasonable in all the circumstances of the case.

## **Decision**

52. The judgment of the tribunal is therefore that the Claimant's claim for unfair dismissal does not succeed and is dismissed.
53. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 4; the findings of fact made in relation to those issues are at paragraphs 7 to 37; a concise identification of the relevant law is at paragraphs 39, 40, 42 and 50; and how that law has been applied to those findings in order to decide the issues is at paragraphs 41, 43 to 49 and 51.

Employment Judge K Halliday  
Dated: 16 December 2021

Judgment & reasons sent to parties: 11 January 2022

FOR THE TRIBUNAL OFFICE