EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MRS J ROBERTSON	**AND**	**CALDERDALE CARPETS LTD**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 29TH / 30TH NOVEMBER 2021

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- **MS D VAN DEN BERG**

FOR THE RESPONDENT:- **MS L FENTON**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that she was unfairly dismissed is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings a claim of unfair dismissal following her dismissal by reason of redundancy.

2. The respondent manufactures carpets for the hospitality industry and is based in Dewsbury in Yorkshire. The claimant was employed by the respondent from 3rd October 2016 as a Design Consultant. She lives in West Sussex and was employed

to work from home, and her evidence is that she only attended at the Dewsbury site some two to three times a year for meetings. Within two days of the lockdown starting on 23rd March 2020 all of the respondents existing orders had been cancelled. With the exception of a few key managers all of the staff were originally furloughed. At the start of the pandemic the respondent had some sixty four employees. In the summer of 2020 some seventeen were made redundant. At present the respondent has a significantly reduced order book and only twenty six remaining employees.

3. The events which led to the claimants dismissal began on 5th August 2020. On that day she was telephoned by Mr Bedford. The circumstances are set out in greater detail below but the claimant contends that she was notified that she was dismissed, whereas the respondent states that it was essentially a consultation about potential dismissal by reason of redundancy. The design team had pre-pandemic consisted of five people, the claimant; a design studio manager; two full time designers and one part time designer. By the time of the claimants dismissal only she, the design studio manager, and one full time designer remained.

4. There was no further contact between the claimant and Mr Bedford and on 28th August he notified her by email that she was being dismissed by reason of redundancy, giving her notice until September 30th. On 3rd September the claimant lodged a grievance complaining in part that she had not been notified of her dismissal in accordance with clause 14 of her employment contract and that the notice as "void". On 10th September Ms Tracey Wadsworth replied accepting the point about notice; and on 15th September she was written to and given notice expiring on 30th October.

5. On 1st October the claimant was offered an alternative role with a reduced salary of £25,000 and no car, in a design role based at Dewsbury which the claimant declined and accordingly her employment came to an end on 30th October 2020.

Conclusions

6. Redundancy is a potentially fair reason for dismissal (s 98(2) Employment Rights Act 1996) and there is no dispute that redundancy was the genuine reason for dismissal. The question is whether the dismissal was fair within the meaning of s98(4). The claimant contends that it was not as there was no, or no adequate consultation; that the pool for selection was wrongly identified, and that there was suitable alternative employment which was not offered.

7. Consultation – The starting point for the dispute about consultation is the conversation on 5th August 2020. It is not in dispute that it was very short, only lasting some five minutes. The claimant contends that she was told she was being made redundant and that she would be given notice on 31st August. The only alternative mentioned was freelance work. She did not contact Mr Bedford again as she understood that the decision had already been made. Mr Bedford says that part time work was also mentioned and that the whole purpose of notifying her on 5th August that she would be given notice on the 31st August was to allow her time to come up

with any alternative; and that as a matter of fact the claimant was not given notice until 31st August 2020.

8. The claimant relies on Mr Bedford's note of the same day in which he describes speaking to the claimant and "*informing her that she is being made redundant*"; and an email sent on the 5th August talking of having made ten redundancies and saying *"…today unfortunately I had to speak to Julie for the same reason."* The claimant invites the tribunal to conclude from this that the decision had been made on 5th August and that in reality there was no consultation. The respondent relies on the last line of the note "*I said that by notifying her now that it would give her additional time to address her options and come back to me further if she wanted to otherwise I would confirm the redundancy at the end of the month*"; and the line in the email saying "*If things pick up this decision could be reversed but at the moment we have to look to reduce costs*. "

9. The respondent accepts that this is hardly a model consultation exercise and that it is marked by a degree of informality, but submits that fundamentally it was a consultation. The claimant was notified of the likelihood of being dismissed and given a reasonable opportunity to suggest alternatives before the final decision was taken. Again as a matter of fact no suggestions were made and the decision was made to make her redundant.

10. In my judgement the question of consultation has to be seen in context. If the claimant is right and the pool was wrongly selected there was clearly no adequate consultation. If however the respondent is right and the claimant was in a pool of one then effectively the issue simply came down to whether there was any alternative to redundancy, in the absence of which the consultation will just be sufficient despite its informality. Looked alternatively if there was a failure of consultation it caused no unfairness if the pool was correctly identified and there was no alternative employment available. This, therefore, leads directly to the question of the identification of the pool.

11. Pool – The claimant contends that the pool should have consisted of herself, the studio design manager and the other designer. For all of them their primary role was as designers, and whilst the others may have had day to day production duties in the factory they were not fundamental to their roles and all three should have been pooled and considered for redundancy. The respondent contends that they were in reality different roles. The claimant was employed working from home with a car to meet and acquire customers nationally and to produce designs. She was not based in Dewsbury, had no production responsibilities and rarely visited the factory. This was an entirely freestanding role and fundamentally different to a factory based designer. This was reflected in the salary of £44,440 which was significantly more than the studio design manager (£33,000) or the other designer (less than £25,000). This was in reality a stand-alone role which the respondent concluded that it no longer needed in circumstances where nationally the hospitality industry was suffering devastating losses. The respondent points to the fact that the claimant was subsequently offered a factory based role but she declined it because it was factory based and would have required her to move. Whilst this goes primarily to the

suitability of the alternative employment it illustrates that the claimants role and the factory based roles were fundamentally different. Moreover this wasn't a case in which it needed generally to lose part of its design capacity, but specifically that the role it had identified as no longer supportable was the home based travelling role given the contraction of the hospitality industry because of the covid pandemic. They were not simply reducing headcount but very specifically losing that role.

12. The authorities allow significant leeway in the construction of the pool and the tribunal should not interfere if the pool has been reasonably and rationally identified, even if there may potentially be alternative ways of doing so. In my judgement it was not irrational to conclude that the home based design role was a stand-alone role fundamentally different from the factory based roles, and that the identification of a pool of one was in those circumstances rationally open to the respondent. However for the reasons given below even had the pool consisted of all three in my judgement essentially the same point would have been reached.

13. Even if I am wrong and a pool of three should have been constructed with the claimant scoring in the top two, in the end the parties would have arrived in the same place. On any analysis it was the home based role which was being made redundant, and if the claimant had scored in the top two the job available to her would have been the factory based role of whichever other member of staff had scored the lowest. Thus whether it was a pool of one or three the fundamental question would still have been reached of whether the claimant was prepared to move to a factory based role in Dewsbury or whether the respondent was prepared to adjust any such role to allow the claimant to work from home.

14. Alternative employment – On 30th September 2020 the Studio Design Manager informed the respondent that she was pregnant and would be taking maternity leave from February 2021. The role offered to the claimant on 1st October would effectively to have been to cover her role during maternity leave. Mr Bedford's evidence was that the hope would be that by the end of that period work would have picked up and the claimant could have been retained. In her witness statement and oral evidence the claimant stated that she would have accepted the pay reduction to £25,000 and the loss of her car but that it was not reasonable to require her to relocate to Yorkshire from West Sussex without relocation expenses. The respondent does not criticise her for rejecting the role but points to the fact that it did what it was required to do which was to offer alternative employment which had become available.

15. The claimant contends that of the job description subsequently provided to her only three of the fourteen elements of the role required a physical presence and that those parts of the role could have been taken up by the designer and/or covered by or allocated to other members of staff so as to allow her to continue to work from home. The respondent contends that that wasn't possible as two factory based designers were required so that one could cover for the other in cases of holidays sickness or other absence.

16. In my judgement the central difficulty in the claimant's case is that it is not for the tribunal to direct how the respondent conducts its business. If the respondent has

identified the two roles going forward as factory based it is not open to the tribunal to impose its own view and conclude that the business could have been structured differently or job roles distributed differently. For the reasons given by Mr Bedford it is in any event clearly not irrational to conclude that the two roles going forward would be factory based. The fact that a reallocation of duties to other staff might have allowed the respondent to have one designer working from home (although as Mr Bedford pointed out those other members of staff have their own jobs to do in any event) does not mean that it is unfair (in the context of s98(4)) not to do so. The essence of and in my judgement the fundamental contradiction at the heart of the claimant's case is that the respondent could have made the peripatetic homeworking role redundant whilst simultaneously permitting her to continue in a homeworking peripatetic role.

17. In my judgement at heart this case is relatively straightforward. I accept that the respondent reasonably and rationally identified the claimant's role as a stand-alone role and as redundant. In those circumstances the claimant who occupied that role would inevitably be dismissed unless alternative employment was available. Alternative employment did become available and was offered to the claimant but she declined it. In those circumstances in my judgement the claimant's dismissal was fair and her claim must be dismissed.

18. It follows that the claimant's claims for unfair dismissal must be dismissed.

Employment Judge Cadney
Date: 29 December 2021

Reasons sent to the Parties: 14 January 2022

For the Tribunal Office