



**Case No. 1406426/2020**

# **EMPLOYMENT TRIBUNALS**

**Claimants:** Mrs K Aiken

**Respondent:** The Duke of Connaught's Own Club (Fareham) Limited

## **RECORD OF A HEARING**

**Heard at:** Southampton (In Person)      **On:** 22 and 23 November 2021

**Before:** Employment Judge Self (Sitting alone)

### **Appearances**

For the Claimant: Mr D Hendry – Lay Representative

For Respondent: Mr K Chehal - Consultant

## **JUDGMENT**

1. It is declared that the Claimant's claim of unfair dismissal is well-founded and succeeds.
2. The parties have agreed the compensation payable by the Respondent to the Claimant in respect of the unfair dismissal in the sum of **£1,777.76**.

## **WRITTEN REASONS (AS REQUESTED BY THE CLAIMANT)**

1. On 7 December 2020 the Claimant brought a claim against her former employer asserting that she had been unfairly dismissed. The Claimant had

been employed by the Respondent as the Assistant Steward and Kitchen Manager between 26 November 2017 and 31 July 2020. The Respondent has denied her claim throughout.

2. I have heard oral evidence from the Treasurer Ms Crabbe and Mr Downer, the Chairman. The Claimant gave evidence herself as did Mr. Collins. Witnesses who did not attend but had provided a statement for the Claimant were given such weight as was appropriate taking into account their non-attendance to be cross examined. There was a bundle of 190 pages and I also heard and considered the parties oral closing submissions.
3. The Respondent is a private members social club in Fareham. It is governed by a set of Rules which are consistent with the Co-Operative and Community Benefit Societies Act 2014. So far as is relevant to this Claim, Rule 18 (2) states that ***“The Committee shall have exclusive powers to appoint, dismiss, enter into a contract of employment and fix the remuneration of .... employees.”***
4. The Claimant’s job description is set out at page 66 of the bundle. Within that she is expected to:
  - a) Liaise with the Stewart to enable efficient handling of all duties.
  - b) Managed the stock levels in conjunction with the steward.
  - c) Prepare and cook food to a high standard when required.
  - d) Work with the steward and senior bar person to maintain accurate accounts on a daily basis.
  - e) Open and close the premises including securing all monies on site and securing the building.
  - f) Undertake all duties that are also carried out by bar staff.

That is not a complete list of the Claimant’s responsibilities but it is a list of those which appear to be relevant to the issues in this case.

5. The staffing of the Club was reasonably lean. Mr Phillip Craven was the Steward and Mr Maggs worked in the kitchen and had some chef qualifications. There were some bar staff who had contracts and some who were on zero-hour contracts. Sylvia Wooldridge was the Head of the Bar Staff and there were also two cleaners.
6. The impression I got was that governance of the club was relatively loose in its application. In August 2019 there was a vacancy for a member of bar staff and in a What’s App discussion Mr Downer effectively appears to present one applicant Mr Graham Craven as a fait accompli without any competition. Mr Craven was the brother of the Steward. I have seen only limited responses to that from the committee and indeed heard evidence that the whole committee was not even on the group. Notwithstanding that and the Rule cited above Mr

Craven was taken on. There seemed to be a number of examples where relatives of the Committee seemed to be employed.

7. I have heard no negative reports about the Claimant in her role at the Respondent. There is not the slightest suggestion that her capability or conduct has been at issue at any time. I am also satisfied that the Claimant had certain marketing skills that opened up other opportunities for the Club and so to all intent and purpose was a useful and valued member of the team.
8. As is often the case in Clubs such as the Respondent there are a number of family groups involved as staff, committee and as officers. That is inevitable and could potentially cause issues on occasions when an objective assessment is required.
9. From a financial basis the Respondent appears to be in a sound position according to their accounts. It seems to hold reserves and made a profit of £43,521 in the year to September 2019 and a profit of £10,314 in the year to September 2020. As at September 2020 the Respondent held just under £97,000 in their accounts which could be used for day to day expenditure. Of the £10,314 profit there was a £10,000 grant given and so in that year on trading figures alone with the club closed for a few months there was a virtual break- even situation.
10. In the early part of 2020, the Covid pandemic took hold in this country and we were all told to stay at home. The hospitality industry as well as many others closed down on 23 March 2020 and remained closed until early July when there was a partial reopening. Unsurprisingly the Respondent took the benefit of the furlough scheme and the Claimant and others received 80% of their pay from the government from 1 April onwards. The Claimant never returned to work for the Respondent although did do some checks on the premises etc over that time in conjunction with the steward.
11. Ms Crabbe states that she did a spreadsheet of figures in or around early June. It provided a comparison of turnover for the 2018/2019 year and the 2019/2020 year. That revealed that the bar takings lost during the close could be approximated as being £69,000 compared to the previous year and food takings were £7200 down. At that time there was still uncertainty as to when premises would be permitted to reopen and what restrictions would remain and she estimated that bar and food takings would only be only 60% of what they would normally be in the run up to the year end in September. That estimate does not appear to me to be an unreasonable assumption.
12. The full spreadsheet cannot have been completed in early June because it has actual figures from the week of 19 July. There may have been an earlier incarnation of this document and I find that there was, but this actual

document cannot have come into place until late July at the earliest and was probably produced for the appeal.

13. The above figures, of course, do not equate to an equivalent drop in profit but that would certainly be less and one can see why, in that situation of uncertainty, alarm bells were ringing as they were for many businesses across the UK. It was also unclear as to precisely how long term the furlough scheme was going to remain. I am satisfied that the spreadsheet was the only document produced at that point in time and that the document at p74 was produced much later.
14. There is no finance or employment / HR sub-committee set up at the Respondent and so I can see no reason why it was not the Committee who determined that redundancies may be possible. Whilst Covid was in its pomp there was no reason why committee meetings could not have been held on Zoom or some other video platform as was happening across the UK at the time. Instead it was the four officers of the Club who made the decision to send out a redundancy warning letter on 16 June 2020 (p.78). The four officers were Mr Downer, Ms Crabbe, Ms Harrop and Mr Wooldridge.
15. The material parts of the letter states as follow:

***“(The Respondent) faces a very difficult situation.***

***Like many other businesses we are dealing with unprecedented circumstances due to the COVID-19 pandemic we continue to review the structure of our business whilst remaining focused on meeting the needs and services of our members and guests.***

***Due to these events and meeting was recently convened involving the four officers of the club. At that meeting, in spite of our careful and thorough consideration of all possible options, it was concluded that we may have no alternative but to make redundancies. The risk, that we are still working hard to avoid, relates to our likely inability to continue to provide work for all of our employees at (the Respondent).***

***We are actively exploring alternatives to compulsory redundancies and, if this proves unavoidable, we will work hard to minimise the number of employees affected. We will consult with all affected employees in due course.***

***The alternative to compulsory redundancy that we are considering include reduction in the hours worked by one or more of our employees. We welcome your ideas and input during the period of exploration. So, if you have any suggestions on ways to avoid redundancies, please let myself or one of the club officers know.***

***If, ultimately, we cannot avoid making redundancies then the stark reality is that we will have to let employees go . Our current assessment of the situation means that we are anticipating compulsory redundancy's affecting all employees at (the Respondent)***

***If redundancies prove to be unavoidable, individuals will be selected for redundancy and we will manage this selection process using objective and quantifiable selection criteria that we will share details on once they are finalised. We are committed to adhering fully to the guidelines laid down by ACAS.***

***We expect that the consultation period is anticipated to take six weeks although this is only a rough time scale and may be subject to change during this time we will arrange individual meetings with each affected employee in order to consult with them in more detail about our proposals how these may affect them personally”.***

16. The Claimant received the letter and believes that everybody else apart from the Cleaners got the same letter too. There is no firm evidence that that is the case, but I accept that other letters were sent out. It is highly unfortunate that there are no minutes or notes of the meeting between the officers at any point in the process. Whilst accepting that the Respondent is a small organisation there can still in my view be little excuse for not keeping minutes especially when the decision making had gone outside the ambit of the Committee, which should have been engaged, and is so important in terms of the futures of many members of staff.
17. There then followed individual consultation. Again, I have no clear idea how many went through that process as it is only the Claimant's consultation form that I have seen (p.80).
18. The Respondent has dwelt on the Claimant's comment that ***“I'm not in a position to reduce anything”*** as being an indication that the Claimant was inflexible. I think this an unfair reading of the consultation as a whole as the Claimant also emphasised that she was versatile in role (bar, kitchen, door, clean). I fully accept that the Claimant was versatile and could do most jobs within the Respondent. Further the Claimant stated that she would prefer to remain on same pay and hours but she ***“did see that she may need to be flexible and long as fair for all and not just me”***. Again, that is a perfectly reasonable position to put forward.
19. On 4 July the Claimant's furlough period was extended for an undefined period. A skeleton staff returned, including the Steward.
20. I have little doubt that the Respondent was in a difficult position at this time with the uncertainty but the reality is that the staff were costing them nothing

as the government were paying. At this point keeping or retaining staff was not making the slightest difference to the profitability of the club.

21. I have no evidence in the bundle of any discussions / meetings held by the four Officers at where they discussed what they were going to do and how it came to be that they made their decision. Minutes of those meetings would be highly illuminating of what they actually did at the time. In the 16 June letter it was stated that:

***“If redundancy is proved to be unavoidable individuals will be selected for redundancy and we will manage this selection process using objective and quantifiable selection criteria that we will share details on once they are finalised we are committed to adhering fully to the guidelines laid down by ACAS”***

22. No details were ever shared of the selection process and indeed no objective and quantifiable criteria has been produced at this hearing. That would be particularly important where relatives may be involved, so as to avoid as best one could, any allegation of nepotism. In any context, however, the selection process needs to be transparent and fair. The process in this case is anything but that.

23. The Claimant was called to a meeting on 8 July 2020 (p.83) and told that she was to be dismissed on account of redundancy. On 10 July the Claimant appealed and stated that she considered the dismissal unfair because:

- a) Some of the officers of the club had vested interests to keep their partners on the payroll
- b) That other members of staff who were employed after herself were welcomed back to work as well as individuals on a zero-hours contract
- c) The Claimant also pointed out that there had been a misunderstanding by the officers of the club when they considered that she was reluctant to reduce her hours / pay and pointed out that she had said in another part of the meeting that while she would prefer her contracted hours and salary she understood that there may need to be a reduction and that she was able to be able to do a wide range of roles.

24. The Claimant was informed that her appeal would be heard by a Consultant from Peninsula by way of a letter on 22 July 2020. The Claimant sought documentation from the Respondent before that meeting and only some of it was supplied. I am satisfied that whilst one item would have been privileged and so should not have been supplied everything else was a reasonable request. It was not supplied because there were no minutes taken from many meetings, the full committee had not been involved and there were no objective and quantifiable criteria to give to the Claimant.

25. The appeal went ahead and the recommendation from Ms Hicks was that the redundancy should be upheld and this was accepted and communicated by Mr Downer. On his own admission he did not look into the detail of the report but simply accepted the bottom-line decision.

26. I have considered Ms Hicks report and make the following comments. She did not give evidence to the Tribunal and so could not be questioned on any of these matters:

- a) She refers at para 4 to there being three consultation meetings with the Claimant in October 2019. That statement would appear to have nothing to do with this case at all and was either an error of fact on her part, or more likely a failure to amend a previous report she had cut and pasted from.
- b) Part of the documents she had was a "Business Case" which included the spreadsheet referred to earlier and the revised trading hours. It provides a rationale for why the Claimant was made redundant but as stated earlier includes figures that only arose post dismissal. To the extent that Ms Hicks believed that was a document used to dismiss the Claimant she was in error. There is also no evidence that the Claimant saw any of these documents and was able to comment on them.
- c) Miss Hicks only spoke to Mr Downer who had told us that he was not privy to the decision making as he thought he would be doing the appeal. There are no notes of any meetings and so Mr Downer could have had little information to impart. It is surprising that other officers who could actually help were not consulted. I am unable to see how Ms Hicks assessed the previous decisions without speaking to the decision makers.

27. Those are the facts which are relevant in this matter and I now move to a brief exposition of the law.

28. For the purposes of this Claim redundancy is defined within the Employment Rights act 1996 which states, so far as is relevant:

**"An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—**

**b) the fact that the requirements of that business—**

**(i) for employees to carry out work of a particular kind, or**

**(ii) 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".**

29. Redundancy is a potentially fair reason for dismissal. A business reorganisation is also a potentially fair reason for dismissal. It is not for me to substitute my own view for that of the employer but I must ask whether the

decision to dismiss fell within a band of reasonable responses. When considering that I need to consider the process undertaken.

30. In particular I need to consider whether there was an appropriate warning of redundancy, whether there has been genuine consultation, whether the selection for redundancy was fair and reasonable in terms of both the pool of employees considered and the selection process adopted and finally whether there was any opportunity to redeploy and whether that was looked at. In addition, I need to consider whether a fair process was adopted which would include, as an example, failing to comply with processes and procedures which the Respondent has indicated will be used.
31. The focus on redundancy is to consider whether the requirements of a business for employees to carry out work of a particular kind had ceased or diminished and in this case there was clearly a diminution and great uncertainty as to when, or indeed if, it would pick up. Contrary to popular belief there is no need for an employer to prove or even show an economic justification for making redundancies.
32. In **Safeway Stores v Burrell (1997) ICR 523**, His Honour Judge Peter Clarke set out a simple three stage test for the Tribunal to apply. It must decide firstly whether the employee was dismissed; secondly, if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished or were they expected to cease or diminish and, if so, thirdly was the dismissal of the employee caused wholly or mainly by the cessation or diminution identified.
33. I am satisfied that in this case there was a redundancy situation in that there was clearly a diminution in the hours required at the Respondent because of the post lockdown situation which led to a great deal less work in the kitchen, in the bar and generally on account of the restricted opening hours and fewer customers. It was highly uncertain when or if matters would return to normal. I am satisfied that the reason for dismissal was redundancy.
34. I was told that once the redundancy situation had been identified the outcome was that staff had their wages reduced to the minimum wage and their hours cut back. In addition, the Claimant alone was made redundant. I have absolutely no contemporaneous evidence as to how these decisions were made and they certainly were not made by the Committee. I have no idea what they weighed up at any given point and how they concluded as they did. The best I have is a summary document produced for the HR Consultants after the event.
35. Once a decision had been made by the Respondent that a redundancy situation existed what were their duties in order to be fair to the Claimant and others?



36. The first duty was to warn staff that redundancies may be on the horizon and I accept that they did that on 16 June 2020. Once that has taken place the next obligation was to consult appropriately with the staff and to consider alternatives to redundancy and also to ensure there was a fair selection process. The Claimant and others were promised objective and quantifiable selection criteria but that was never delivered and it should have been.
37. I find that the selection process does not appear to have had any real objective basis and certainly did not comply with which was promised in the letter of 16 June. In that particular area the Respondent wholly failed to deliver, and on the evidence before me it is not possible to exclude conscious or unconscious bias being a material influence in what transpired. In short, I have no contemporaneous evidence at all about what the Officers did or did not do in the process to come to their conclusion. I have factored in the size and administration resources of the Respondent and still find it fell far short of what was required to provide a fair process.
38. I have no evidence that the Respondent really looked at appropriate pools of employees at all. It is clear to me that they made certain assumptions. A reasonable employer would have had a number of pools. The Claimant and the Steward would be one, the Claimant and the chef would be another, and then the Claimant with all of the bar staff. It was clear that the Claimant could do all the jobs of everybody else and so the need for clear and objective criteria upon which to assess each was fundamental especially as there was a possibility of bias. In order to dilute the possibility of bias the Rules should have been followed with the Committee making final decisions on dismissal or otherwise.
39. On the balance of probabilities, the Officers started with a plan as to what the final outcome would be on account of assumptions they had made. I can see from what is written at page 74 that the Steward was deemed untouchable. There should have been an objective scoring matrix for the Claimant to be assessed against him as it seems to me that the Claimant could do the task of Steward as well. A similar objective process should have been undertaken in respect of the kitchen work. Yes, the other candidate was qualified (although nobody could tell me as what) but was that necessary for the reduced hours and menu? Did the Claimant bring other skill sets to the club such as her marketing work and ability to deputise for others? There was just no proper assessment done by the Respondent.
40. In conclusion, I can understand why it was there was a decision made that the Claimant's role could disappear in the circumstances. She was supporting the steward; she was supporting the chef and she was supporting the bar staff. I can see why just getting rid of the support and leaving others in place was a simplistic means of reducing costs. What is unacceptable, however, is

the failure to consider her against others as set against the objective criteria promised. The positives of others are championed whereas the Claimant's skill sets remain largely unconsidered. That is clear in the bar staff which was part of the Claimant's job anyway

41. Consultation is only relevant if you listen to all of what people say as opposed to some of it. I find that the Respondent only listened to that which fitted in with their narrative. There also may have been a different outcome had the Committee been asked to ratify the decisions as the Rules say they should
42. The appeal was unfair too. Mr Downer did not critically examine the report but simply followed it unquestioningly. In my view he had, in actuality (and despite his denials), been involved earlier in the decision making and that was why Ms Hicks spoke with him. Errors in the report were not picked up, not all documentation was given to the Claimant (business plan) and the appeal was superficial and did not really address the failings that I have identified in this case. There was a lack of rigour all round.
43. Taking all these matters into account I find, without hesitation, that the Claimant was unfairly dismissed.
44. There are so many errors in the process in my view it is impossible with any precision to say what the outcome would have been and little evidence has been led on this and in some areas no evidence has been led in this area at all. I am satisfied however that it was a prudent and reasonable course to seek to cut costs because of the uncertainties and so there was a general risk that the Claimant may have been dismissed even if the proper processes and analysis had been gone through and I assess that at 20%. Compensation will be reduced by that percentage.
45. If the Claimant had have remained in the organisation it would have been at the minimum wage which would have been £8.72 per hour and on no more than 25 hours per week. I find it was inevitable that her hours would have been cut had she escaped redundancy. That equates to a gross of £218 per week.
46. The Claimant is not entitled to a Basic Award in this case because she has already been paid her redundancy pay and she is not entitled to double recover.
47. The parties agreed the compensatory award at £1776.76.

Employment Judge Self  
Date: 7 January 2022

Judgment sent to parties: 17 January 2022

FOR THE TRIBUNAL OFFICE