EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss M Thorne	**v**	Bure Valley Adventures Ltd T/A Bewilderwood

Heard at: Norwich (In person/by CVP) **On:** 28 February 2022

Before: Employment Judge Postle

Appearances
For the Claimant: Mr Collins (Family Friend).
For the Respondent: Mr Jones (Chief Operating Officer).

JUDGMENT

1. The claimant was unfairly dismissed.

2. Had a fair selection process been followed there was a one in four chance that the claimant would have been dismissed in any event, compensation is therefore reduced by 25%.

3. The respondent is ordered to pay compensation to the claimant in the total sum of £4,254.59.

4. The award is subject to recoupment for the period 1 January 2021 to 12 April 2021.

REASONS

1. This is a claim for unfair dismissal. The reason advanced for the dismissal is redundancy. In this tribunal we have heard evidence from Mr Jones the Chief Operating Officer of the respondent giving his evidence through a prepared witness statement, he also provided a bundle of documents consisting of nine sections. The claimant gave evidence through a prepared witness statement and provided a bundle of documents consisting of 96 pages. It is to be noted during the course of today's hearing when the claimant gave her evidence she was not cross examined

by the respondent's Mr Jones despite being prompted twice by the Judge as to whether he had any questions, failing which her evidence would be accepted as unchallenged.

2. The facts of this case are relatively straightforward and that is the claimant was employed by the respondent as a Set and Prop Maker. We know that she was good at her job, as it is accepted by Mr Jones on behalf of the respondent that they had no doubts in the claimant's abilities to perform her job.

3. The claimant's job description was exactly the same as three other colleagues. Perhaps not surprisingly when the pandemic came along the respondent was looking to reduce their head count. It is clear that there was to be a redundancy situation and I am satisfied that the definition of redundancy under s.139 of the Employment Rights Act 1996 is satisfied. In particular the requirements to carry out work of a particular kind has ceased, is likely to cease or diminish in the future. The problem for the Respondent is that the claimant was employed on the same job description as three other colleagues performing similar work. The claimant was invited without any warning to a meeting (21 November) to discuss what she was told was to consult over her redundancy. That was the first time she had heard about redundancy and at the meeting on 21 November she was told that her role had been identified as potentially redundant. However, at the same time her colleagues seemingly had not been identified or their roles being potentially redundant and had not been invited to any consultation meetings and had not been in any way warned of potential redundancies.

4. The claimant was then invited to a second consultation meeting on 2 December following which she pressed for details of the selection criteria, eventually that was produced and we see that in her bundle at page 76. When that was prepared we do not know, exactly who prepared it we are not entirely sure and as there is no particular author to that document. Mr Jones tells us that he prepared it in conjunction with the HR consultant. Some of the selection criteria is clearly subjective in its nature and the claimant was not consulted about the selection criteria or told how the selection criteria would be assessed before her role had been identified as redundant.

5. The claimant had a third meeting which effectively was just to confirm her position was redundant.

6. The three other colleagues that were employed on the same job description as the claimant were not put in any pool for consideration/selection for redundancy. The reason that the respondent advanced is that their jobs were fundamentally different which we have heard a number of times during the course of these proceedings. However, what the tribunal have not been directed to or shown is how their roles are fundamentally different to that of the claimant. There clearly was no meaningful selection process or consideration of a pool for selection of

the claimant and her three colleagues. It is also clear that they were not warned of the possibility of redundancy and they certainly had no consultation meetings regarding a redundancy.

7. At the time when the claimant's redundancy was declared, the respondent was actively looking for roles at their site at Cheshire. One accepts that those roles had not been formulated with the pandemic coming, ultimately those roles were not filled or at least some of them until the following Easter. However the fact remains that in a redundancy situation if there are roles being advertised the claimant should at least have been offered or considered for those roles even if the implementation of those roles was to be delayed. That did not happen.

8. The law in these matters, it is quite simply this; redundancy is a potentially fair reason to dismiss under s.98(1) of the Employment Rights Act 1996 but of course that is not the end of the matter. The tribunal then has to have regard to s.98(4) in deciding whether the employer has acted reasonably or unreasonably in the dismissal and indeed the selection of the claimant for redundancy.

9. It is well trodden law that to conduct a fair redundancy there must be adequate warning and the obligation to consult about redundancy is entirely separate from an obligation to warn of an impending redundancy. The claimant in this case was not warned of an impending redundancy before consultation took place.

10. There is also the duty on an employer to consider whether there is a proper pool of employees for selection for redundancy. It is clear that the claimant was employed as a prop and set maker and there were three other colleagues doing similar work who had exactly the same job descriptions. It is quite simply not acceptable to say well they are fundamentally different without providing any evidence as to why they are fundamentally different. They should have been quite properly put in a pool for selection. The law is, provided an employer has genuinely applied it's mind to who should be put in the pool for the consideration of redundancy it will difficult if not impossible to challenge it but in this case clearly the respondent did not address their mind to the appropriate pool of employees to be put in as potential for selection for redundancy. There is absolutely no reason why the other three should not have been put in the pool and if they were doing fundamentally different roles then a selection criteria properly applied would have found that out but of course that never happened and we will never know the answer to that question.

11. Taking all matters in the round, it does follow that the procedure adopted for the redundancy was flawed. The consultation process, although there were three meetings; it is quite clear that when she went to the first meeting she was told that her role had been identified as redundant. It is clear that as there was no other pool with her colleagues that her future with the company was doomed and that in effect the three consultation meetings were shams. Remember consultation must be meaningful and

must be a proper and clear process, it clearly was not in this case, the respondent did not even have a clear selection process which had been adopted prior to the claimant being identified as redundant.

12. Furthermore an employer is under a duty to consider alternative roles. One accepts that those roles may not have been completely set in stone. Nevertheless there should have been consideration and exploration as to whether any of those roles were suitable even, if they were going to be delayed. It clearly should have been put to the claimant that there is a possibility of a role at the alternative site in Cheshire although that may not come to fruition until a few months later. That would be better than being completely unemployed and finding it difficult to find alternative employment during the pandemic.

13. As for the appeal, again the company's own procedure seems to make it clear that an appeal should be conducted in person. For reasons best known to Mr Horwood, he decided that he could deal with an appeal based on the information that was provided to him and no doubt by Mr Jones and Miss Jones from HR. It is clear that that appeal was far from meaningful, proper and clear.

14. If one looks at the appeal letter of 17 December at page 93, for example he says, "When considering roles for redundancy all roles across the business were accessed and selected fairly and consistently in line with best practice", he gives no explanation as to how he arrives at that decision. Another example, "Your role was identified early during the process as fundamentally different to those of your colleagues". Again he gives no explanation as to how he has arrived at that decision and therefore one can only conclude that he was going through the motions in dealing with the appeal.

15. Taking all those factors into account, the selection for dismissal by reason of redundancy was procedurally flawed and unfair. Clearly if an appropriate pool had been used and an objective criteria for selection then there was a one in four chance that the claimant might have been selected for redundancy. Therefore her compensation should be reflected by a reduction of 25% to represent that possibility.

Remedy

16. The tribunal then went on to deal with compensation. It was agreed between the parties that the claimant's nett monthly income with the respondent was £1,391.12.

17. The claimant tells me she found alternative work on 12 April 2021 with Merlin Entertainments at Alton Towers. In those circumstances the claimant clearly mitigated her loss and the respondent's Mr Jones accepts that.

18. The claimant's loss is therefore three months plus one week which amounts to £4,387.36. The tribunal then has to deduct 25% on the basis that there was a one in four chance that the claimant would have been dismissed in any event had a proper pool been constructed. That gives a balance of £3,290.52.

19. That sum is subject to recoupment, namely from 1 January 2021 to 12 April 2021 as the claimant was in receipt of Universal Credit.

20. The claimant is also entitled to three months and one week employers pension contributions which amounts to £114.31.

21. The claimant is entitled to loss of statutory rights and I assess that at £400.

22. The claimant in order to find alternative employment had to up sticks and go to Cheshire and therefore she is entitled to recover van hire for moving her furniture in the sum of £373.15 together with diesel and travelling to Cheshire from her home in Norfolk in the sum of £76.62.

23. That gives a total sum that the respondent is ordered to pay to the claimant in the sum of £4,254.59.

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Employment Judge Postle

Date:25/3/2022

Sent to the parties on: 7/4/2022

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For the Tribunal Office