EMPLOYMENT TRIBUNALS

Claimant: **Mr I Avasiloaia**

Respondent: **Collider Limited (In Voluntary Liquidation)**

Heard at: London South Employment Tribunal
On: 25 February 2022

Before: Employment Judge Keogh

Representation
Claimant: In person
Respondent: Mr Joliffe and Ms Harker (on behalf of the joint liquidators)

JUDGMENT having been sent to the parties on 23 March 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant brings a claim for unfair dismissal. He was employed from 16 April 2018 to 31 July 2020 as an Artworker and then a Senior Creative Artworker. A response was filed to the claim however the respondent has since gone into voluntary liquidation. Mr Joliffe and Ms Harker for the joint liquidators attended the hearing but did not wish to actively participate in the hearing.

2. I heard oral evidence from the claimant and read a bundle of documents he had compiled.

Facts

3. The claimant was promoted to Senior Creative Artworker in June 2019. Before this date his role had already been increasing in the department and he had started to carry out some design work.

4. The claimant had some difficulties with his manager, and raised a grievance against him. This was not resolved to his satisfaction.

5. In March 2020 internal emails (which are heavily redacted) suggest that a decision was made to make the claimant redundant at an early stage. An email on 10 March 2020 states the respondent would go into consultation with him. An email on 12 March 2020 queries whether the respondent could do without the claimant entirely or whether they would be filling his role with a freelancer. An email on 13 March 2020 says that the claimant had been asking questions so 'we want to put a bit of daylight between the announcement of cost cutting measures and potential … Julian redundancies'. An email on 28 April 2020 says, 'We are now looking at … Julian … as immediate changes.'

6. The claimant was not told he was at risk of redundancy until 10 June 2020. I find however that a decision had already been made to make his role redundant prior to the consultation process commencing.

7. A consultation meeting was held on 12 June 2020 and was adjourned to a further date on 17 June 2020. The claimant was not put into a selection pool on the basis that his role was standalone and tasks could be performed by other members of the department. It was confirmed in the meeting on 17 June that the claimant's line manager had not been consulted within the process. The claimant put forward a number of proposals to avoid his redundancy, including offering to reduce his salary in line with furlough payments, and to consider roles at a lower level of responsibility and lower salary.

8. It does not appear that serious consideration was given to these proposals. An email on 18 June 2020 states that there would be an argument in offering a percentage pay cut, but the respondent would have to check whether they would have to accept as it represented little additional cost to the business, and if they were to accept would they be duty bound to offer this to others (whose names have been redacted, but it is assumed were the other two employees made redundant).

9. The claimant received a letter dated 3 July 2020 confirming his redundancy. It is stated that there were no alternative roles available to him. He was given the right to appeal.

10. The claimant appealed his dismissal and a hearing was held on 16 July 2020. The claimant suggested that the whole of the creative department should have been put into a pool. In evidence today he said this was because there was an overlap between roles. He had been carrying out creative work for more than a year.

11. An appeal outcome letter was sent dated 23 July 2020. This suggests that the appeal chair had reviewed all job descriptions and had requested and reviewed a breakdown of specific roles and responsibilities delivered within the creative team over the 12 months up to furlough. She had applied a 'rule of thumb' that roles should have an overlap of 70% to be deemed similar enough to warrant a pool, and was satisfied that the pooling decisions made were reasonable and appropriate. The claimant confirmed today that he had not been given the information which was referred to in this letter to review himself.

12. The claimant confirmed in evidence that there were a number of other roles he could have done, including within the 3D department, the design department, going exclusively creative or helping out with IT. None of these potential alternatives appear to have been considered by the respondent.

13. The claimant found alternative employment on 4 January 2021.

14. Mr Joliffe did not play an active part in the hearing and did not give evidence, however he confirmed, which is a matter of public record, that the respondent went into voluntary liquidation on 11 December 2020. He states that all employees were made redundant two weeks before that, however I have no evidence to that effect.

Issues

15. The issues to be determined are as follows:

Unfair dismissal

(i) What was the reason for dismissal? The respondent says the claimant was dismissed by reason of redundancy.

(ii) Was the reason a potentially fair reason within section 98 Employment Rights Act 1996?

(iii) If the reason for dismissal was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will decide whether:

(a) the respondent adequately warned and consulted the claimant;
(b) the respondent adopted a reasonable selection decision, including its approach to a selection pool and any scoring within the pool;
(c) The respondent took reasonable steps to find the claimant suitable alternative employment;
(d) Dismissal was within the range of reasonable responses.

(iv) If the claimant is successful, what basic award/statutory redundancy payment is payable to the claimant, if any?

(v) If there is a compensatory award, how much should it be?

(a) What financial loss has been caused to the claimant?
(b) Has the claimant taken reasonable steps to replace their lost earnings, for example by taking another job?
(c) Is there a chance the claimant would have been dismissed anyway if a fair procedure had been followed, or for some other reason?
(d) If so, should the claimant's compensation be reduced? By how much?
(e) Does the statutory cap of 52 weeks' pay apply?

Conclusions

16. In reaching my decision I have considered all the evidence before me. I bear in mind that the evidence of the claimant has not been challenged.

17. I find that the claimant was dismissed by reason of redundancy. It appears from early emails that the respondent was looking to make cost reductions and considered they could do without the claimant's role.

18. This is a potentially fair reason for dismissal within section 98 of the Employment Rights Act 1996. However, I find that for a number of reasons the dismissal was unfair and was outside of a range of reasonable responses open to the respondent.

19. The decision to make the claimant's role redundant appears to have taken place in around March 2020, a long time before any consultation process was opened. It was pre-determined and it does not appear that the consultation process was anything more than a confirmation of the decision that had already been made. I find there was no adequate consultation and insufficient regard was had to the various suggestions that were made by the claimant as alternatives to redundancy.

20. I remind myself that the Tribunal should not substitute its own decision for that of the respondent when considering selection pools and scoring. However in this case it appears that the decision to treat the claimant as being in a standalone role was outside of the range of reasonable responses. I accept the claimant's evidence that there was a substantial overlap between his role and that of others in the department, and that there were a number of other roles he could have undertaken. The claimant's line manager was not consulted in determining the selection pools to apply. While it appears a more detailed exercise was carried out at the appeal stage, there is no explanation for the respondent's decision that roles needed a 70% overlap in order to be pooled together, nor does it appear that such a test was applied when the decision was made to make the claimant's role redundant. The claimant was never given the opportunity to comment on the information said to have been collated at the appeal stage.

21. I do not consider that the respondent gave any real consideration to suitable alternative employment for the claimant.

22. In the circumstances I find that dismissal was outside the range of reasonable responses available to the respondent.

23. The respondent paid a statutory redundancy payment to the claimant which is equivalent to the amount the claimant would have received as a basic award, so no basic award is payable.

24. In determining how much compensation should be awarded to the claimant I have considered his various applications for alternative employment. He started work on 4 January 2021 and only claims compensation up to that date. He has based his calculations on what he would have received had he remained on furlough.

25. I have considered whether the claimant would have been made redundant in any event had a fair process been followed or for some other reason. I am not satisfied that there is evidence before me that he would in fact have been made redundant in the redundancy process carried out in June and July 2020. The company did go into voluntary liquidation on 11 December 2021 and I am satisfied that redundancies would have been made in any event around that time. However, the claimant was entitled to a month's notice and he found new employment within a month of the company going into voluntary liquidation. I do not therefore consider that there should be any reduction to the compensation payable to him on that basis.

26. He was out of work for 20 weeks and I award £481 per week, a total of £9,620. I also award £375 for pension loss, which is £18.75 per week for 20 weeks. The claimant seeks job hunting expenses of £249, which was the cost of software he purchased. I am satisfied that this was a reasonable expense he was required to pay in order to put together a CV to demonstrate his work, including a portfolio of his creative work. He further claims £500 for loss of statutory rights which is a reasonable sum. I therefore award a total of £10,744.

Employment Judge Keogh

Date 31 March 2022