EMPLOYMENT TRIBUNALS

Claimant: Miss N Sisodia

Respondents: (1) London School of Science and Technology Limited
(2) Fairfield School of Business

Heard at: The Midlands West Employment Tribunal (remotely, by CVP)

On: 9 June 2022

Before: Employment Judge Wilkinson

Representation

Claimant: in person
Respondent: Mr D Brown (counsel)

JUDGMENT having been sent to the parties on 13 June 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

The claim

1. This is the claimant's claim for unfair dismissal arising from her employment with the first or second respondent which lasted between December 2016 and 3 July 2020. There is a dispute between the parties as to when the claimant's employment commenced. The claimant asserts that it was 8 December 2016 (in her ET1 form) whereas the second respondent asserts that it was 12 December 2016 (in its document entitled Ground of Resistance). It is neither necessary nor probative for me to have determine this discrete point as it does not affect the claims before the tribunal.

2. In her ET1 form the claimant had additionally ticked the box entitled 'other payment'. However at a preliminary hearing on 25 January 2022 before Employment Judge Dimbylow she confirmed that she was not pursuing this claim.

3. The claimant was employed as a receptionist / administrative assistance. It is not disputed that she was initially employed by the first respondent which is an independent higher education institution. The second respondent is a sister company and is also a community-based learning provider located in Croydon with a sit in Digbeth, Birmingham. It was at the site in Digbeth that the claimant worked.

The parties and representation

4. The claimant is Neera Sisodia. She is a litigant in person.

5. The respondents are 1) The London School of Science and Technology; and 2) Fairfield School of Business. They are sister companies. Both have been represented by Mr Brown (counsel).

Parties' positions on the claims

6. The claimant says that she was unfairly dismissed. She disputes that a genuine redundancy situation had arisen, she disputes that the selected pool was fair, that the selection process was fair and that the respondents acted fairly when considering whether to offer her alternative employment.

7. The respondents assert that there was a potentially fair reason for the claimant's dismissal; namely redundancy. The respondents assert that dismissal by way of redundancy was fair and within range of reasonable responses. It is asserted that the process was fair in all of the circumstances.

8. There is a dispute between the parties as to the name of the correct employer. Ultimately for reasons which will become clear the determination of this minor, but important, point is not determinative upon my decision. Nevertheless, I considered this as part of the evidence and my findings are set out below.

The issues for determination

9. The issues for the tribunal to ultimately consider were therefore those set out in the order of Employment Judge Dimbylow dated 25 January 2022; namely:

    a. Was the claimant dismissed – this was agreed. She was.

    b. What was the reason or principal reason for dismissal? The respondent asserts that it was redundancy.

    c. If it was redundancy, did the respondents act reasonably in all of the circumstances in treating that as a sufficient reason to dismiss the claimant; in particular:

        i. Did the respondent adequately warn and consult the claimant?

        ii. Did the respondent adopt a reasonable selection process including in its approach to a selection pool?

        iii. Did the respondent take reasonable steps to find the claimant suitable alternative employment?

iv. Was dismissal within the range of reasonable responses?

d. The tribunal also would have had to consider remedy in the event that the claim succeeded. In this case the claim did not succeed and therefore I do not address issues of remedy in this judgment.

The hearing and the evidence before the tribunal

10. In determining the claims I considered the documentation set out in the full tribunal bundle to which I was referred either through the parties' witness statements, in the oral evidence or in submissions.

11. Additionally I heard oral evidence as follows:

    a. For the respondent I heard from Catherine Hook (a Human Resources officer) and from Mohsin Riaz (Academic Dean); and

    b. The claimant herself.

12. I also heard closing oral submissions from Mr Brown on behalf of the respondents and from the claimant.

13. The hearing was conducted remotely by way of CVP. There were no technological issues which arose. I ensured that all participants had sufficient comfort breaks. The hearing was listed for two days but the evidence, submissions and my judgment with reasons were capable of being concluded in one day.

14. In all of the circumstances I am satisfied that the hearing was fair and all parties were able to fully participate in it. No party sought to argue otherwise.

The law

15. The law in this matter is not contentious. Neither party made any particular submissions in respect of the well-established legal principles save that Mr Brown (who I invited to deliver his closing submissions first in light of the claimant being a litigant in person) referred me to some well-known authorities set out below.

16. The key piece of legislation is the Employment Rights Act 1996 ("the Act").

17. Section 94 of the Act states:

    (1) An employee has the right not to be unfairly dismissed by his employer.

18. Any complaints that an employee was dismissed are brought pursuant to section 111(1) of the Act.

19. An employee must show that he or she was dismissed by the employer, as defined in section 95 of the Act, however it is common ground in this case that there was a dismissal.

20. Section 98 of the Act deals with the general principles relating to claims of unfair dismissal. It states the following:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
>
> > (a) the reason (or, if more than one, the principal reason) for the dismissal, and
> >
> > (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it—
>
> > (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
> >
> > (b) relates to the conduct of the employee,
> >
> > (c) is that the employee was redundant, or
> >
> > (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
>
> …
>
> (4) Where the employer has fulfilled the requirements of subsection (1), 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.

21. In this case the respondents assert that the potentially fair reason was redundancy pursuant to s 98(2)(c) of the Act. Redundancy is defined in section 139 as follows:

22. Section 139 of the Act sets out as follows:

> (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –
>
> > (a) the fact that his employer has ceased or intends to cease –

(i) to carry on the business for the purposes of which the employee was employed by him; or

(ii) to carry on that business in the place where the employee was so employed, or

(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.

23. In this matter Mr Brown hangs the respondents' case upon the definition in s 139(1)(b) as set out above.

24. There is a wealth of case law in respect of redundancy unfair dismissal cases. I have borne in mind the following cases which were cited in Mr Brown's closing submissions and which to me encapsulate the correct approach to considering such cases:

    a. *Williams v Compare Maxam Limited* [1982] IRLR 83;

    b. *Morgan v The Welsh Rugby Union* [2011] UKEAT/0314/10/LA; and

    c. *Wrexham Golf Club v Ingham* [2012] UKEAT/0190/12.

25. Those authorities broadly set out the following relevant legal points:

    a. Generally speaking employers must act within the band of reasonable responses.

    b. Employers must give employees adequate notice of any proposed redundancies and ensure a proper consultation takes place, bearing in mind their size and their resources.

    c. When making a selection decision employers must act reasonably in both identifying the selection pool and the criteria by which employees within that pool are to be selected.

    d. It is permissible to have a pool of one – this is ultimately a decision for the employer provided that it acts within the range of reasonable responses. The tribunal must not substitute who it thinks ought to have been in the pool but consider whether the employer acted reasonably in limiting the pool.

    e. Employers must take reasonable steps in all of the circumstances to find employees suitable alternative employment.

26. Finally I remind myself that in respect of factual evidence the standard of proof to be applied is the civil standard, the balance of probabilities. That means that a party asserting a fact must prove that fact is more likely than not to have happened.

27. Were I to have found in the claimant's favour I would have gone on to consider remedy. Given my decision is that the claim is dismissed I do not set out the relevant legal provisions within these reasons as it is not necessary so to do.

Findings of fact and assessment of the evidence

28. As with any case such as this there are a number of facts which are both agreed and disputed. I will deal with my findings of fact in broadly chronological order. I will indicate as necessary where a fact is agreed and if not, the basis upon which I have made a determination of a disputed fact.

29. I have only decided those facts which are probative to the issues before the tribunal rather than determining every factual dispute.

30. At the outset of this section of my judgment I make clear that I accept that each of the witnesses were doing their best to assist the tribunal. Inevitably over time memories will fade. I do not make any specific adverse findings against any of the witnesses that they were either lying or otherwise seeking to deliberately mislead the tribunal. Where I prefer one witness over the other I have made clear the reasons for this. Inevitably it is because of their position and therefore knowledge base, some supporting or otherwise probative documentary evidence or based on my assessment of their evidence against the evidence as a whole and my other findings of fact.

31. As set out above the claimant commenced her employment in December 2016. It is not necessary for me to determine the precise date. She worked as a receptionist / administrative assistant at the Digbeth campus, initially employed by the first respondent.

32. In March/April 2019 the respondents assert that a transfer of the business and the claimant's employment (a "TUPE transfer") took place and that the claimant was thereafter employed by the second respondent as of 21 April 2019. This was not accepted by the claimant.

33. On the balance of probabilities I accept the position advanced by the respondents. I do so for the following reasons:

    a. Within the bundle there is a contract of employment which is explicitly made between the claimant and the second respondent and is signed and dated by the claimant on 17 April 2019. That document makes clear that the contract was made between the claimant and the second respondent as of 21 April 2021 but that the claimant's continuous employment for statutory purposes commenced on 12 December 2016.

    b. There is additional documentation within the bundle which supports the respondents' assertion, namely:

i. A note of a consultation meeting in advance of the purported transfer at which the claimant is recorded as having attended dated 25 March 2019;

ii. A signed document confirming the same – signed by the claimant and dated 28 March 2019; and

iii. A letter confirming the proposed transfer which was sent to the claimant dated 28 March 2019.

c. Whilst the claimant does not accept that she was at the meeting or that she signed the document – on the basis that she cannot recall either attending or signing – she does accept that she received the letter and that she signed the contract of employment on 17 April 2019. In my judgment it is not probative to determine whether the claimant was at the meeting or whether she signed the note on 28 March 2019 on the basis that she accepts that she received the letter on 28 March 2019 and she accepts the truth of written and express contract of employment.

d. It is right to note that there are some confusing features of the evidence which the claimant points to, namely:

i. She received payslips after April 2019 in the name of the first respondent;

ii. The claimant says (and I accept on the basis that it was not challenged) that she was asked to work on campuses under the control of the first respondent, as opposed to the second respondent, after April 2019; and

iii. There appears to be a merging of roles between the two companies. For example neither Ms Hook nor Mr Riaz who gave evidence to the tribunal are or have ever been employed by the second respondent. They are both employed by the first respondent.

e. However on the balance of probabilities I accept and find that there was a TUPE transfer and that and the material time the claimant was employed by the second respondent.

34. That having been my finding of fact, I pause to consider the impact of that upon my overall decision. At the outset of the hearing Mr Brown indicated that he did not seek to make any submissions in respect of the service of the claim upon the second respondent nor was any issue procedural issue taken. I was not invited to determine this issue as a preliminary matter and therefore consider it as part of the wider canvas of evidence in the case. I do not consider that that finding of fact impacts upon the case more generally for that reason and for the reason that the claimant's statutory rights regarding the continuation of her employment are explicitly preserved by the express terms of the contract signed on 17 April 2019.

35. In any event for the reasons that I will go on to clarify the claim fails on the merits in any event.

36. In March 2020 the Covid-19 pandemic struck. This is clearly an agreed fact and one that I can in any event take judicial notice of.

37. I heard evidence from Mr Riaz as to the impact of the pandemic upon the Higher Education sector and the respondents' business in particular. Mr Riaz's evidence was that there was financial uncertainty for such businesses. He told me that students were not able to access face to face learning during the pandemic which crystalised in the summer of 2019 as the respondents had to consider the arrangements for the new academic year which was due to start in September.

38. Mr Brown submitted to the tribunal that overall there was an unclear and uncertain picture at the start of the pandemic. He observed that there were a number of global lockdowns, that the United Kingdom went into and out of lockdowns and that at the time of the claimant's dismissal in July 2020 there was unknown situation.

39. When challenged on this point by Mr Brown the claimant disagreed although was unable to give a reason why.

40. I agree with Mr Brown's submissions, based upon the evidence of Mr Riaz. I remind myself that Mr Riaz is the Academic Dean of the first respondent company and therefore in a good position to give evidence on the financial impact of the pandemic. In particular I find that:

    a. The Covid-19 pandemic was an unprecedented global events with many sectors of the economy facing uncertainty;

    b. In late Spring / early summer of 2020 whilst the initial lockdown restrictions had eased there was more uncertainty to come. I am satisfied of this both based upon Mr Riaz's evidence and knowledge of the impact at the time and also because it was borne out by subsequent global events of which I can take judicial notice (there were further lockdowns, further restrictions and further rules over the winter of 2020 at a time when there were no Covid-19 vaccinations available or developed).

41. It is against those findings of fact that I further find, accepting Mr Riaz's knowledge-based evidence, that at the time of the claimant's dismissal the respondents were dealing economic and practical uncertainties against the background of an unprecedented global pandemic.

42. It was against that background, say the respondents, that the decision was taken to make redundant their front of house / receptionist staff members.

43. The evidence of Ms Hook which was unchallenged by the claimant was that the other campus operated by the second respondent (at Croydon) had no receptionist staff members and that any receptionists at campuses operated by the first respondent (of which there was only one) was also made redundant. I accept this unchallenged evidence and find as a fact that this was

the situation in which the respondents generally and the second respondent in particular found itself.

44. I asked the claimant what her working situation was between the start of the first national lockdown and the end of her employment. She told me that she worked from home during the entirety of that period. In my judgment this was important as two subsequent findings of fact flow from that:

    a. It is clear that as a result of the lockdowns – even when the lockdowns were lifted – the claimant's public-facing role was not capable of or needed to be carried out; and

    b. The claimant was not present on the campus to be able to give any first-hand evidence as to the number of students being present on the campus as the lockdown restrictions eased.

45. The claimant disputes that there was a genuine redundancy situation or that the respondent was in a difficult financial situation. She asserts that the economic situation was improving and in fact a profit was being made. She points to reports from the end of the financial year – March 2021 – which appear to suggest that students were increasingly returning to the campus (and that this was up by 10% from pre-pandemic levels). She asserts that she was invited to a return to work meeting by an email sent on 2 July 2020 to all employees of the respondent and that a new secretary was employed on the Digbeth campus shortly after her dismissal.

46. I do not accept the claimant's case on this point. I reject her position for the following reasons:

    a. The reports relied upon by the claimant are dated 31 March 2021. I not that these were prepared therefore based on financial figures three quarters of the year (or nine months) after the claimant was dismissed. They cannot therefore be an accurate report of the financial situation facing the respondent between the start of the pandemic and 3 July 2020, as to which I prefer the evidence of Mr Riaz and Ms Hook.

    b. I agree with Mr Brown's submission to the tribunal that between July 2020 and the end of March 2021 the overall global and domestic picture in respect of Covid-19 was fundamentally different from July 2020. Namely – the government had published a road map out of all lockdowns and the vaccination programme had commenced. Therefore I accept the position of and evidence from the respondents that the economic outlook was fundamentally different.

    c. Mr Riaz gave evidence that in respect of student numbers and attendance the use of online learning had increased. I accept this direct first hand evidence of Mr Riaz. The claimant could not give direct evidence on this point for obvious reasons. Additionally, in respect of attendance at the campus I have already observed that the claimant's direct evidence is limited following the onset of the pandemic in March 2020.

d. In respect of the email and meeting on 2 July 2020, I make the following findings and observations:

    i. I accept that the claimant received the email. Although she could not show me a copy she gave oral evidence on the point. This was not challenged or disputed by the respondent.

    ii. However it is common ground that the meeting and email was sent to all employees and not specifically to the claimant – it cannot therefore be inferred that the respondent had intended the day before the dismissal to specifically invite the claimant to return to work.

    iii. There is no evidence that it specifically covered the claimant's role.

    iv. I do not find that this is in and of itself demonstrative of an improved economic situation – rather it demonstrates and adaptation to the realities of life under the pandemic and the lessening of restrictions in summer 2020.

    v. In any event, insofar as it relates to the claimant's role it flies in the face of my earlier finding regarding the role of receptionist / administrative assistant being made redundant across all of the first and second respondent's sites.

e. In respect of the claimant's assertion that a new receptionist was in post at the Digbeth campus shortly after her dismissal, I reject this assertion and find that no new receptionist was or indeed is employed to carry out the claimant's role. I do so for the following reasons:

    i. The only evidence relied upon by the claimant is anonymous text messages from people she asserts were former colleagues. It is unclear what their role is or their knowledge is. The claimant was reluctant to name them. As Mr Riaz observed when challenged by the claimant in evidence, even if people saw someone sat at the reception area they could not necessarily know the role that that person was employed in.

    ii. There is no direct evidence in support of the claimant's assertion. She does not say in her own evidence that she has seen a new receptionist. The height of the claimant's case is therefore hearsay evidence in the form of text messages from unknown sources.

    iii. Against this is the sworn, oral evidence of both Mr Riaz and Ms Hook. In particular I asked Ms Hook the question of whether there was a new receptionist. I found her answer and her response to be convincing and clear – she answered directly and without hesitation. I accept her evidence on this point.

    iv. The claimant asserts that she has requested CCTV evidence from the respondents but that has not been provided. However

I am not satisfied that such evidence would be probative nor that I could draw an adverse inference from it. I have reached that conclusion having reminded myself that no application for disclosure has been made nor was the point seemingly raised before Employment Judge Dimbylow in January 2022 (insofar as it is not recorded on the face of his case management order).

v. On the balance of probabilities I therefore prefer the sworn oral evidence on behalf of the respondent and find that there has been no receptionist employed at the Digbeth campus since the claimant's dismissal on 3 July 2020.

f. I remind myself before leaving this section of my reasons that I have to take care not to substitute my decision for the employer. In particular I must be careful to go behind how the respondent chooses to run its business without evidence to gainsay that. Rather I must look at reasonableness of the respondents actions. I am not satisfied that the respondent has acted unreasonably or that there is evidence to gainsay the economic realities as advanced by the respondents.

47. It was against that background that the respondent sought to commence its redundancy exercise. It determined to make redundant receptionist staff members. This inevitably left a pool of one, as the claimant's employer was the second respondent. The second respondent only had two campuses (Digbeth and Croydon). There was no receptionist employed at the Croydon campus.

48. I pause there and remind myself, as Mr Brown submitted to me, that it is permissible as a matter of law to have a pool of one. I will consider the reasonableness of that in all of the circumstances below.

49. Notwithstanding that there was a pool of one, the respondent thereafter carried out a process of redundancy. The focus of the evidence and the case in respect of this issue focussed inevitably on the offer of alternative employment. However I set out my findings of fact in full as the process overall in relevant when considering the overall reasonableness of the respondents' actions.

50. A number of meetings took place involving the claimant in the procedure:

a. 12 June 2020 – a meeting giving notice that her role was at risk of redundancy;

b. 18 June 2020 – a first consultation meeting;

c. 3 July 2020 – a second consultation meeting at which the claimant was dismissed.

51. The minutes of all three of the meetings were provided in the bundle and I have considered those. The claimant disputes the length of some of the meetings and provides telephone records (in the form of text messages and call logs) in support of this assertion. Ms Hook could not remember the length of the meetings but rather gave evidence on how long such meetings usually took. I

prefer and accept the claimant's evidence on this point and find that the meetings were shorter than that recorded in the minutes of the meetings.

52. However the length of the meetings is not in my judgment probative to the issues I have to determine. Indeed the claimant did not advance a case that they were. In my judgment the content of the minutes and therefore the meetings is of more value. The claimant in her evidence broadly accepted the content of the meetings with some minor discrepancies. It is not necessary for me to set those out herein as it is not necessary for me to determine the disagreements nor would it alter my overall findings or decision. In any event given the passage of time and the inevitable fading of memories it appears to me that to do so would be difficult if not impossible when there is a near contemporaneous record available for the tribunal.

53. Accordingly therefore I find that I can broadly accept that the meetings went as recorded in the minutes and the claimant broadly accepts this.

54. The claimant accepted that for each of the relevant meetings she was advised of her right to be accompanied by trade union representative or other support and that she declined this. She also accepts that she was reminded of this again at the outset of all of the meetings.

55. It is an agreed fact that within the meetings alternative positions within the businesses of both the first and second respondents were discussed. Mr Brown submitted that the second respondent was going over and above its duty to do this. Whilst I accept that by considering employment within both companies may be demonstrative of the reasonableness of the employer, in my judgment given the proximity of the two companies it is highly likely that to have done otherwise may have led to criticism by the tribunal if such employment opportunities existed. I will return to the alternative positions below.

56. Following the third and final meeting on 3 July 2020 the claimant was sent a letter dated 7 July 2020 which refers to her right to appeal. This was by way of an email to Mr Riaz who had not previously had any involvement in either the decision to make redundancies or the process relating to the claimant.

57. It is accepted that the claimant did not in fact appeal.

58. The claimant says that this was because of a telephone conversation that she had with Mr Riaz on 3 July 2020 at which, she asserts, he laughed and said that because the decision to make the claimant redundant had come from the CEO of the business there would be "no point" in appealing. Mr Riaz specifically denies laughing or having said that. His evidence was that he called as a courtesy when he found out, for the first time, that the claimant had been made redundant and that it was her final day. There is no documentary or other independent evidence of this telephone call and therefore I am tasked with considering the evidence of both the claimant and Mr Riaz. On balance I prefer the evidence of Mr Riaz. He told me that he felt that he had a duty of care to his employees. He also told me that whilst he may have been light-hearted in the telephone call this was because of his good relationship with the claimant and that it was a reciprocal levity. The claimant disputed this.

59. However I accept Mr Riaz's evidence that he had no knowledge of the claimant's redundancy prior to the 3 July 2020 and when he made the telephone call. There is no evidence to gainsay this. Having accepted that it seems to me unlikely that he would have had sufficient knowledge of the decision making process in respect of the redundancy to be able to assert that the decision came from the CEO. Additionally I found Mr Riaz to be earnest in his evidence when describing how he sees his role. I accept that he made the telephone call with the best of intentions. I am not satisfied on the balance of probabilities that the conversation was as described by the claimant.

60. I deal finally with the respondent's consideration of alternative employment. It is accepted that on the same day as the notice of the redundancy intention was given to the claimant (12 June 2020) an email was sent to the claimant from Mihaly Nagy (a HR officer) advising her of alternative jobs vacancies. These vacancies were within the first respondent's company as opposed to the second respondent. The claimant asserts there were three vacancies at the time whilst the respondent asserts that there were two. It is not probative for me to determine this matter.

61. In any event the claimant applied for an was interviewed for a role as an Admissions Assistant. I have seen notes of an interview that took place on 26 June 2020 with Daniel Clifton. Mr Clifton had previous knowledge of the claimant and her work. The claimant asserts that this was unfair as it was not a genuine interview, the decision having been pre-determined and her application pre-judged. The respondent asserts that it came to a decision fairly after an interview and based on its previous knowledge of the claimant who spent some time previously covering a similar role.

62. I accept the respondent's case on this matter for the following reasons:

    i. The claimant accepted in her evidence that Mr Clifton had previous knowledge of her ability to fulfil a role similar to that for which she had applied, albeit she submitted that another person had more direct experience.

    ii. That other person was Mr Riaz. Mr Riaz was not part of the recruitment process; however he gave evidence to the tribunal that in his opinion the claimant had struggled when she had previously undertaken a similar role.

    iii. Within the notes of the interview Mr Clifton sets out his reasons for not recommending the claimant for employment in that role; namely that he felt that she "couldn't cope with the pace". The claimant disputes this assessment.

    iv. I remind myself that it is not my role to make a determination of the claimant's capability or otherwise for the role. I must consider the reasonableness of the respondent's decision making.

    v. At an earlier point in her interview when being asked about the role and her understanding of it, the claimant is recorded to have observed that she had previously found the targets set to be high. When taken specifically to this point by Mr Brown in evidence the claimant denied

having said this. This contradicted an earlier answer when she confirmed she did not dispute the accuracy of the note. She was unable to explain this differing answer when challenged. Given that the note was a contemporaneous note and given the inconsistencies within the claimant's oral evidence on her acceptance of its accuracy, I prefer and accept that the note was accurate. I accept that she did make an observation as to the high target rates of the role.

vi. I also accept Mr Riaz's evidence as to his view of the claimant's capabilities in the role. I do so because it was direct oral evidence, there is nothing to suggest that he had previously said something different in the past and additionally it accords with the conclusions of Mr Clifton.

vii. Accordingly I am satisfied that the conclusion reached by the respondent was reasonable based on the evidence before me.

viii. I also note for the sake of completeness that at the meeting on 1 July 2020 the respondent asserted, when asked by the claimant, that there were other candidates more suitable for the role who had been offered the job. Again, in light of my previous finding I accept that this was a reasonable conclusion to have made. Although of course I have not seen full evidence of the other candidates and their interviews, Ms Hook's evidence to me was that there were multiple applicants for the role.

Discussion

63. Having set out the factual background to the case and my findings on any probative dispute points, I turn to briefly discuss the claims by reference to the legal principles set out above and the list of issues identified by Employment Judge Dimbylow in his order of 25 January 2022.

64. In summary I am satisfied that:

    a. Against the background of Covid-19 it was reasonable for the respondent to be concerned for the financial situation it found itself in.

    b. To commence a redundancy process was a reasonable thing to do

    c. I remind myself that whilst it is not for me to interfere in how respondents run their businesses; however I am satisfied there was a genuine redundancy exercise and therefore a potentially fair reason.

65. In particular I am satisfied that the claimant was dismissed wholly because the requirements of the respondents' business for employees to carry out the role of receptionist / administrative assistant generally and specifically at the Digbeth campus had ceased or diminished as a result of the pandemic and the business needs of the respondent.

66. Turning then to the fairness of the decision and the whether the respondent acted reasonably and again based on my findings of fact I am satisfied that:

a. Against that background the respondents reasonably took a decision to reduce their front of house staff and that the reason for that was a reasonable one (the reduced student numbers and the associated practical and financial uncertainties of Covid-19).

b. That given that the claimant was the only receptionist working for the respondent it was reasonable to have a pool of one. In her evidence, and for the first time, the claimant sought to suggest that the pool ought to have been widened to include both academic staff and student support staff. Mr Brown submits that this suggestion was perhaps not fully thought through, in particular with regard to academic staff. I agree. I am satisfied that the focus of the respondent on front of house or receptionist staff was entirely reasonable in all of the circumstances.

c. Given that there was a pool of one it follows that it is axiomatic that the selection process was also fair.

d. That in following a proper procedure notwithstanding that – namely three interviews with the opportunity to appeal – the respondent adequately warned and consulted the claimant.

e. That the respondent took reasonable steps in trying to find alternative work for the claimant in that:

    i. She was given notice of alternative employment within both respondents' businesses at the earliest opportunity.

    ii. She was interviewed for the role that she applied for.

    iii. The selection and interview process and the ultimate decision was carried out and made reasonably in all of the circumstances.

f. Accordingly and given that the claimant was unsuccessful in the recruitment process for the alternative role, I am satisfied that dismissal was within the range of reasonable responses.

g. I remind myself in respect of all of the matters above that I must not substitute my own decision but rather I must consider the respondents' actions through the prism of the range of reasonable responses.

Conclusion

67. It follows that the claim for unfair dismissal cannot succeed and must be dismissed.

68. In light of that decision I do not need to go on to consider remedy.

69. Those are my reasons.

Case Number: 3311927/2020

Employment Judge **Wilkinson**

Date: 21 June 2022