

# EMPLOYMENT TRIBUNALS



**Claimant**  
**MR. F. HARRISON**

**V**

**Respondent**  
**SECOM PLC**

**Heard at: Bury St Edmunds Employment Tribunal (remote, CVP)**

**On: 13 July 2022**

**Before: Employment Judge Mason**

**Representation**

**For the Claimant: In person.**

**For the Respondent: Mr. Fanthome-Hodgson (Finance Director)**

## **RESERVED JUDGMENT**

**The judgment of the Tribunal is that the Claimant's claim for unfair dismissal fails and this claim is dismissed.**

## **REASONS**

**Background**

1. The Claimant started employment with Ambassador Security Group (a wholly owned subsidiary of East Midlands Electricity PLC) on 25 May 1992. His employment was transferred to the Respondent in early 1996.
2. The Claimant's employment was terminated by the Respondent on 26 February 2021.
3. On 11 May 2021 the Claimant contacted Acas and an Early Conciliation certificate was issued on 22 June 2021.
4. The Claimant presented this claim on 20 July 2021; he claims he was unfairly dismissed. The Respondent submitted a response denying that he was unfairly dismissed; the Respondent says the Claimant was fairly dismissed by reason of redundancy (alternatively "some other substantial reason" namely a business reorganisation) and that, in all the circumstances of the case, the Respondent acted fairly and reasonably.

5. On 3 December 2021 EJ Alliot (on the papers) listed this hearing, made case management orders and directed: *“A claim for unfair dismissal only has been accepted and there is no claim for age discrimination”*

### **Procedure at the Hearing**

6. The Respondent provided a bundle of agreed documents which the Claimant confirmed he had received and had access to at the hearing.
7. I also had witness statements from the Claimant and, on behalf of the Respondent, from Mr. Dodson (Divisional Director), Mr. Blake (Sales and Marketing Director), Mr. Wilkinson (Pre Configuration Manager) and Mr. Fanthome-Hodgson (Finance Director). Both parties had copies of all witness statements.
8. Mr. Fanthome-Hodgson represented the Respondent. He has some experience of Employment Tribunal proceedings in his capacity as the Respondent’s Head of HR. The Claimant was not represented and has Parkinson’s disease; I stressed to him that he should make me aware if at any time he needed a break or if he would like anything repeated or explained.
9. At the start of the Hearing, having established the issues, I retired to read the bundle and the witness statements. I then heard from the Respondent’s witnesses who adopted their witness statements as their evidence-in-chief and were cross-examined by the Claimant. After lunch, I heard from the Claimant who adopted his witness statement as his evidence-in-chief and was cross-examined by Mr. Fanthome-Hodgson. I then listened to brief verbal submissions from the Claimant and Mr. Fanthime-Hodgson. I reserved my judgment which I now give with written reasons having explained to the parties this written decision will appear online.

### **Claims and Issues**

10. The issues in this case (as discussed with the parties at the outset) are as follows.
  - 10.1 Reason for dismissal:
    - (i) Was the reason for the Claimant’s dismissal a potentially fair reason (s98(2) Employment Rights Act (“ERA”)?
    - (ii) The Respondent says the principal reason was redundancy. Was there a cessation or diminution in the requirement for employees to carry out work of the particular kind carried out by the Claimant?
    - (iii) Alternatively, was the Claimant dismissed for “some other substantial reason” specifically a business reorganisation?
  - 10.2 Fairness
    - (i) If the Claimant’s dismissal was for a fair reason, did the Respondent act reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the Claimant? This is to be determined in accordance with equity and all the circumstances of the case, having regard to the Respondent’s size and resources (s98(4) ERA).

(ii) 10. The issues in this case as discussed with the parties at the outset are as follows.

10.1 Reason for dismissal:

- (i) Was the reason for the Claimant's dismissal a potentially fair reason (s98(2) Employment Rights Act ("ERA"))?
- (ii) The Respondent says the principal reason was redundancy. Was there a cessation or diminution in the requirement for employees to carry out work of the particular kind carried out by the Claimant?
- (iii) Alternatively, was the Claimant dismissed for "some other substantial reason" specifically a business reorganisation?

10.2 Fairness

- (i) If the Claimant's dismissal was for a fair reason, did the Respondent act reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the Claimant? This is to be determined in accordance with equity and all the circumstances of the case, having regard to the Respondent's size and resources (s98(4) ERA).
- (ii) Did the procedure followed and the decision to dismiss fall within the range of reasonable responses open to a reasonable employer in the same circumstances? The Tribunal must be careful not to substitute its own view.

10.3 Compensation

- (i) The Claimant has received a Statutory Redundancy Payment (SRP) which extinguishes entitlement to a Basic Award.
- (ii) Is the Claimant entitled to a Compensatory Award to compensate for his loss of earnings and loss of statutory rights and, if so, should there be:
  - a. any reduction on the basis the Claimant failed to take all reasonable steps to mitigate his loss? and/or
  - b. any reduction or limit to reflect the chance that the Claimant would have been dismissed in any event and that any procedural errors accordingly made no difference to the outcome? (**Polkey**)?

**Findings of fact**

- 11. Having considered all the evidence in the round and having reminded myself that the standard of proof is the balance of probabilities, I make the following findings of fact.
- 12. The Respondent is a security business which installs, maintains and monitors intruder alarm systems, CCTV, access control systems, fire alarms, fire stopping systems, care technology systems, and physical security (e.g. gates). It has around 550 employees in the UK.
- 13. The Claimant's role was Technical Support. He was one of two people in the Corporate Technical Services team. His role was to provide technical support to the Respondent's engineering teams and to the Respondent's account management teams. He was largely field based but when working from an office this would be in Northampton.
- 14. Since 2018, the Claimant's Line Manager was Mr. Dodson, Divisional Technical Director with responsibility for the Claimant's team. The only other member of the Corporate Technical Services team was Mr. Higgins, based in Kenley. It is

accepted that the Claimant and Mr. Higgins had distinct and separate roles within the Corporate Technical Services Team.

15. A separate team based in Hull, the IPCCTV team, also provided technical support. At the time of the Claimant's redundancy there were 5 people in this team, including Mr. Wilkinson, head of the technician team (3 were on furlough leave at the time of the Claimant's dismissal). The IPCCTV team provide technical support for systems based primarily on newer more advanced technology (primarily Milestone) than that supported by the Claimant. Despite the name of the team, the systems supported by the IPCCTV team were not restricted to just CCTV but also other systems such as care related and intruder based systems.
16. The Corporate Technical Services Team on the other hand supported technology which was largely old and becoming obsolete; the technology was no longer installed on new installations and demand was therefore diminishing. The Corporate Technical Services Team did not provide support on Milestone, which was the platform of choice for many customers. The Claimant accepts this in his claim form:  
*"My group were working in the majority on old technology equipment which was not easily transferable to the other group and if it were its shelf life would be short due to changes in technology and customer requirements"*
17. The Claimant also accepts in his claim form that there were significant differences between the Corporate Technical Services Team and the IPCCTV team: *"... the working practices were similar but worlds apart with different skills and equipment"*.
18. In 2015 and 2017, the Claimant took steps to arrange training on Milestone but this did not in fact happen.
19. From 22 April 2020 to the date of termination of his employment on 26 February 2021, the Claimant was furloughed. I accept Mr. Dodson's evidence that during this period no other staff were deployed or taken on to carry out the Claimant's work and this was carried out by Mr. Dodson and it took him about ½ a day per week.
20. I accept that the Respondent suffered a significant reduction in turnover and at the end of October 2020, Mr. Dodson completed a review of Corporate Technical Support services (pages 77-82) and concluded that the two roles in Corporate Technical Services were no longer sustainable. He concluded:  
*"On review these services have evolved over time and we now have different locations providing very similar services for individual clients or manufacturer based systems. This has led to single points of failure and also duplication of roles and responsibilities. If we combined these locations and merged them so that all the systems and manufacturer based systems were supported from one location, this would eliminate the single point of failure element to the Business and also allow the team to focus on the core elements of their roles instead of having to work across the spectrum. This would also provide the Business with a one stop shop facility instead of multiple different locations for support.  
Currently Engineering teams have to contact different teams to seek support, which can cause down time on site and confusion across the departments. If we were to relocate the services to*

one location then the team would be able to provide a more efficient and professional service to the engineering teams.

My recommendation is to merge and relocate the services based in Kenley and Northampton, into the Hull Office. The team in Hull currently provide very similar services and would be able to absorb (due to the reduced demand) and support the Kenley\Northampton services with ease. This would also provide resilience within the services as they would no longer be reliant on one member of staff.

Over the last year we have also seen a large drop in demand for the Extralis Adpro Secom Vision systems, these systems are now quite expensive compared to other technologies providing the same level of protection and the demand for new systems will only diminish further in the future. Currently the Interactive CCTV systems are now supported in Hull, except for a small number of Xtralis systems. We have also reduced the estate of older Servision systems and there is no longer a full time demand to support these systems.

With this in mind I would suggest that both the current roles should be considered for redundancy. With the current trading position and the fact that Fred has been on Furlough permanently since April would support the lack of work we have to continue as is. Pat has also been on Furlough since April, and has been working part time hours since July, which again I believe supports the case for redundancy.”

21. On 25 January 2021, Mr. Dodson drew up a document entitled Business Case for Redundancies in Corporate Technical Support (pages 91-92):

“Overview

The year started slowly in Q1 with sales coming in 10% below budget and resulting in a Q1 operating loss. The loss of the Co-op maintenance and monitoring contract from 6 April 2020 provided further reductions in recurring revenue and chargeable repairs which are around £5m p.a. On top of these challenges, the world was hit with the Covid 19 global pandemic and the UK went into lockdown on 23 March 2020. As at December 2020, turnover was down 12% on budget and 17% on previous year, which has made it difficult to trade profitably given our staffing levels and fixed costs.

Secom Plc is part of the Secom Co Limited group which is traded on the Japanese stock exchange and as such there is a requirement to make a sufficient profit to satisfy the stakeholders in the group. The Coronavirus Job Retention Scheme allowed Secom Plc to furlough short term surplus staff, but as that scheme is soon due to come to an end, the Company has had to consider roles that are surplus in the slightly longer timeframe in order to save cost and produce a satisfactory return.

Mark Dodson has reviewed the entire Technical Support structure within Secom and two roles have been identified as limited in scope, with insufficient workloads to keep the staff fully occupied and those roles are isolated and therefore present single points of failure generally on older and sometimes obsolete technologies. These roles are Technical Support Northampton based and Technical Support Kenley based. There is only one employee in each of these roles being Fred Harrison and Pat Higgins.

Fred Harrison has been furloughed from 22 April 2020 to 31 October 2020, then was on flexible furlough working 2 days a week from 1 November to 15 November working 2 days a week and has been back on full-time furlough ever since. Pat Higgins has been furloughed from 22 April 2020 to 5 July 2020 and then has on flexible furlough working 3 days a week ever since.

Whilst turnover is increasing gradually, it is likely to take until at least the middle of 2021 before we get to previous levels minus the lost Co-op turnover (approximately 10% down on pre-Covid levels). This extra turnover is unlikely to provide substantial new work for these two Corporate Technical Support roles. It is therefore planned to consolidate the Secom Technical Support Team in Hull where the bulk of resource currently is, which will ensure that we have resilience, even for the older outdated technologies, and the workloads of the two positions in Northampton and Kenley can be absorbed into Hull. This will create a significant cost reduction for Secom which will help to secure ongoing profitability and produce more robust Technical Support function.

Therefore the company is looking to make the two Technical Support roles based in Northampton and Kenley redundant.”

22. Mr. Fanthome-Hodgson, Finance Director and Head of HR, agreed with the view that the two roles should be considered for redundancy and gave guidance for managing the process.
23. The Claimant told me that he accepted there was a fall off (or diminution) in the work he was required to carry out in the Corporate Technical Services Team.
24. The Respondent regarded the Claimant as being in a pool of one and therefore there was no selection criteria as his role was distinct from that of Mr Higgins. The Claimant has not taken issue with this and has not suggested that staff in the IPCCTV team should have been in the pool for selection.
25. On 9 February 2021, the Claimant was advised his role was at risk of redundancy (page 93). Mr Dodson then consulted with the Claimant on 11 and 18 February 2021. The Claimant does not take issue with the consultation process.
26. The Claimant was made aware of any vacancies at that time but did not apply as he considered them unsuitable.
27. It is not in dispute that during the consultation process the Claimant did not suggest transferring to the IPCCTV team. However, I accept the Claimant's evidence that he did not do so on the mistaken assumption that the IPCCTV team only supported CCTV systems whereas in fact they supported a number of other types of system.
28. I accept Mr. Wilkinson's evidence that at the date of the Claimant's dismissal there were no vacancies in the IPCCTV team at that time; the Claimant told me he also accepted this. Had there been a vacancy, the Respondent accepts that the Claimant could have been trained and would potentially have been suitable to fill such a vacancy regardless of the fact he had not been trained on Milestone at that point; however, this is academic as there was no such vacancy.
29. The Claimant was notified of the decision to make him redundant on 18 February 2021 and his employment came to an end on 26 February 2021 (page 107-108) . He did not appeal. He was paid 12 weeks' in lieu of notice, a statutory redundancy payment and monies in lieu of one days' holiday
30. The Claimant does not take issue with the procedures followed; he accepts that apart from the issue of alternative employment in the IPCCTV team, the process was fair. He emailed Mr. Dodson on 25 February 2021 (page 111):  
" Hi Mark,  
*May I take this opportunity of thanking you for your professionalism demonstrated in the consultancy period of my redundancy, I would also like to express my sincere thanks for your technical help during our working relationship over the many sites and types of equipment. During these periods gained a great deal of knowledge from you which encouraged me to look further into the world of IT and Things via the OU Thanks*  
*Finally, I wish you all the success in the months and years to come and it's been a pleasure to have worked with you."*
31. The work carried out by the Claimant is now carried out within the IPCCTV team. I accept Mr .Wilkinson's evidence that this consists of taking only 2 or 3 calls per

week from service engineers and this “legacy” work has been easily absorbed by the IPCCTV team; I accept this takes up about 2 to 3% of the team’s time. No one was recruited to the IPCCTV team whilst the Claimant was furloughed. A vacancy subsequently arose in the IPCCTV team in December 2021.

## **RELEVANT LAW**

### **32. Reason for dismissal**

#### **32.1 Section 98 (1) ERA:**

In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show:

- (i) the reason (or if more than one the principal reason) for the dismissal
- (ii) that 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.

#### **32.2 Section 139(1) ERA:**

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.

32.3 Once the Tribunal has determined that the reason was genuinely redundancy, it will not look behind the employer’s decision or require it to justify how or why the diminished requirement has arisen.

### **33. Reasonableness of Dismissal:**

#### **33.1 Section 98(4) ERA:**

Where the employer has fulfilled the requirements of s98(1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons 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.

33.2 In deciding whether an employer has acted reasonably in dismissing for redundancy, the Tribunal’s function is not to ask whether it would have thought it fairer to act in some other way; the question is whether the decision lay within the range of conduct which a reasonable employer could have adopted (*Williams v Compair Maxam Limited* [1982] ICR 156).

### **34. Unfair dismissal Compensation:**

- 34.1 In addition to a Basic Award (section 119 ERA), **Section 123(1) ERA** provides for a Compensatory Award: “... *the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer*”.
- 34.2 Mitigation:  
**Section 123(4) ERA** requires a Claimant to mitigate their loss and a Claimant is expected to explain to the Tribunal what actions they have taken by way of mitigation. This includes looking for another job and applying for available state benefits. The Tribunal is obliged to consider the question of mitigation in all cases. What steps it is reasonable for the Claimant to take will then be a question of fact for its determination.
- 34.3 **Polkey v AE Dayton Services Ltd [1987] ICR 142 (“Polkey”):**  
Where evidence is adduced as to what would have happened had proper procedures been complied with, there are a number of potential findings a Tribunal could make. In some cases it may be clear that the employee would have been retained if proper procedures had been adopted. In such cases the full Compensatory Award should be made. In others, the Tribunal may conclude that the dismissal would have occurred in any event. This may result in a small additional Compensatory Award only to take account of any additional period for which the employee would have been employed had proper procedures been carried out. In other circumstances it may be impossible to make a determination one way or the other; it is in those cases that the Tribunal must make a percentage assessment of the likelihood that the employee would have been retained.

## **Conclusions**

35. Applying the relevant law to the findings of fact to determine the issues, I have concluded that the Claimant was fairly dismissed and therefore his claim fails.
36. Reason for dismissal:
- 36.1 The Respondent has shown a fair reason (s98 ERA) as I am satisfied that the Claimant’s dismissal was by reason of redundancy as defined in section 139(1)(b)(ii) ERA. The Respondent’s requirement for work of the particular kind carried out by the Claimant had diminished and was expected to diminish further. The Claimant told me at the end of his evidence that he accepted this.
- 36.2 It is not for the Tribunal to determine whether or not it was a sound commercial decision or to require the Respondent to justify how or why the diminished requirement has arisen; there is no need to show economic justification or a business case.
37. Procedural fairness:
- 37.1 The Claimant does not take issue with the fact that he was in a “pool of one”; he does not argue that members of the IPCCTV should have been included.
- 37.2 The Claimant does not take issue with the consultation process.
- 37.3 With regard to alternative positions, there was no failing or unfairness on the Respondent’s part as:
- (i) the Claimant was aware of any vacancies within the Respondent company but chose not to apply;



- (ii) there were no vacancies in the IPCCTV team at that point (he accepts this);
- (iii) the subsequent vacancy in the IPCCTV team did not arise until some 10 months after the Claimant's dismissal and is irrelevant to the fairness of the Claimant's dismissal;
- (iv) there was no obligation on the Respondent to create a role for him in the IPCCTV team.

38. In conclusion the Claimant's dismissal was for a fair reason, specifically redundancy. The Respondent acted reasonably in treating that reason as a sufficient reason for dismissing the Claimant; the procedure followed and the decision to dismiss fall within the range of reasonable responses open to a reasonable employer in the same circumstances.

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Employment Judge Mason

14 July 2022

Judgment sent to Parties  
31 July 2022

T Cadman  
For the Tribunal