EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Kevin Framingham	**v**	Standley Steel Stockholders

Heard at: Norwich **On:** 1 August 2022

Before: Employment Judge Postle

Appearances
For the Claimants: Ms Davies, Counsel
For the Respondent: Miss Sharp, Counsel

JUDGMENT

The unanimous decision of the Tribunal is:

1. The Claimant was not unfairly dismissed under Section 98 of the Employment Rights Act 1996.

2. The Claimant was not automatically unfairly dismissed under Section 103 and Section 100 of the Employment Rights Act 1996.

3. The Claimant did not suffer detriments for making public interest disclosures under Section 47B of the Employment Rights Act 1996.

4. The Claimant's claim for unlawful deduction from wages was settled during the course of these proceedings.

REASONS

1. The Claimant brings claims to the Tribunal under the Employment Rights Act 1996 ("ERA") for what is commonly called ordinary unfair dismissal, a claim for automatic unfair dismissal for making public interest disclosures and a claim for Health and Safety disclosures under s.100. The Claimant also has claims that he suffered detriments for making public interest disclosures under s.47B ERA 1996.

2. There was a further claim for holiday pay, but that has been settled during the course of these proceedings.

3. The specific detriments that the Claimant suffered are that he alleges that he was ignored by Mr Standley, the proprietor of the business, that he was put at risk of redundancy, that the Respondents failed to properly consult him over redundancy, they failed to properly score him and he was selected for redundancy because of the public interest disclosures that he says he made.

4. The evidence we have heard in this Tribunal is from:

   - Mr Ford the General Manager;
   - Mr Brown a former Fabrications employee;
   - Mr Nicholls a former Fabrication employee now employed in an alternative position of Yard Man;
   - Mr Daglish the Stockholding Manager;
   - a lorry driver Mr Heyes; and
   - Mr Standley who was in fact too ill to attend.

   Note: Mr Daglish and Mr Heyes, the Respondents did not call.

5. All those witnesses gave their evidence through prepared witness statements.

6. The Claimant also gave evidence through a prepared witness statement.

7. The Tribunal had the benefit of a Bundle of documents consisting of 165 pages.

8. The fact of this case show the Respondent is a metal fabrication company covering the Norfolk and Suffolk region and the Respondent also has a steel stockholder component to the business which supplies steel to a variety of clients including the food industry, farming, engineering and construction. Prior to the redundancy process the Respondent's fabrication work comprised of structural and non-structural and general fabrication. After the redundancy process the structural fabrication was stopped but general fabrication of stockholding continues.

9. It is clear during lockdown in the course of the pandemic, the Claimant raised a number of safety concerns about staff not adhering to social distancing, despite safety measures being put in place about this by the Respondents. This came to a head when in May 2020 an employee was informed he had been in contact with a third party who had tested positive for Covid. The Claimant raised concerns and after checking with Peter Standley, eventually that employee was sent home until he was testing negative. The Respondents had also provided hand sanitiser, taking card payments over the phone rather than cash or in the office, customers required to wait outside the warehouse and delivery drivers once unstrapped their loads to wait in their cabs. It is accepted on some occasions these restrictions were not always followed, it being difficult to

police all the time. The Claimant, it is accepted, on occasion raised his concerns about safety measures for Covid not always being followed.

10. It was in December 2020 that it appears a decision was reached to close the structural fabrication side of the business and this was due to a number of reasons, but the primary reason was there were ongoing health issues which unfortunately had been occurring for Mr Ford the General Manager and Mr Standley the sole proprietor. It was also this side of the business, it has to be said, where it appears there was more administrative input required, more management required and therefore considered more onerous to continue. What the Respondents, or Mr Standley and Mr Ford, wanted to do was make sure the long term viability of the Respondents was insured by closing down the structural fabrication side of the business.

11. It is understandable that the Respondents did not tell or warn the workforce of their decision until after Christmas, a decision that is often taken by companies to avoid the displeasure and an uncomfortable Christmas period.

12. As a result, it is clear that the Respondents took legal advice. They took advice from a Business Advisor Mr Seach and they also considered advice from ACAS and the Federation of Small Businesses. It is clear it was not a decision taken lightly by either Mr Standley nor Mr Ford, but it was to protect long term viability and the future of the company. Also, at the time there was the renewal of the CA Certificate which is required for the structural fabrication side of the business which apparently is expensive and administratively cumbersome.

13. The plan was that no new structural orders would be accepted after 31 January 2021 and the employees were invited to a meeting on 4 January 2021 where they were put on notice of business transformation; we see that at page 123 of the Bundle. An announcement was made that started off,

> *"Changes to the business that will affect you. You will all be aware that following some time off from the business, I have been looking at its long term viability in the current economic climate together with my own personal health issues. After careful consideration, I regret to inform you that I will be transferring the business to a smaller operation in the immediate future. This means with effect from 31 January 2021, the structural fabrication part of Standley Steel will close to new business."*

14. That notification then went on to set out what this means for the employees, it set out the support the Respondents proposed to give to the employees affected and it set out a time line of important dates, particularly: 4 January 2021, the notice announced and at risk; 5 January 2021 was to be when the consultation period begins; around about 18 January 2021 (although that date is not fixed in stone) the consultation period was likely to end; 19 January 2021 the formal notice period begins;

19 January 2021 to 13 April 2021, all notice periods completed depending on how long that individual employee's notice period lasts; the fabrication shop closes to new business on 31 January 2021; and thereafter the site rationalised and cleared in support of the business decision.

15. A decision was taken that the pool of six Structural Fabricators was to be used and to use a scoring criteria. The people put in the pool for selection were: Messrs Buckingham, Nicholls, Peck, Greave, Brown and the Claimant. Mr Heyes, the Lorry Driver whose primary job was lorry driving, was not put in the pool for obvious reasons and Mr Daglish was also not put in the pool as he was the Stockholding Manager.

16. The scoring criteria to be used was: skill, quality, job knowledge, flexibility, potential attendance, time keeping and service. It is clear that some of the criteria would inevitably involve some objective assessment and some subjective. In this respect, in relation to the subjective assessment, clearly Mr Standley and Mr Ford knew the workforce well, it was a small company, some of which had been with the Respondents for a long time. The scoring was weighted and that had been independently worked out and assessed and as a result of the scoring, the Claimant scored second with the employee Mr Nicholls scoring top. It would appear that the process of scoring was conducted by Mr Ford around 20 December 2020 and Mr Standley in early January 2021 and the Tribunal accept that the scoring was independently carried out.

17. A decision had been reached to meet the workforce and that occurred on 4 January 2021.

18. Each individual in the pool was then met by Mr Ford and Mr Seach which was in the form of a Consultation Meeting. The Claimant was invited by letter, page 127 of the Hearing Bundle. The Tribunal noted the letter did not contain the right to be accompanied and the meeting takes place on 5 January 2021. The minutes of that meeting are at page 128 of the Hearing Bundle. There clearly was a brief overview of the scoring discussed using ACAS, the Federation of Small Businesses and Solicitors Guidance. There were discussions about notice, when it would start, whether the business could be sold or purchased, whether Mr Ford or the Claimant could speak to clients about the possibility of employment in other companies and the sale of relevant parts of the company to third parties.

19. Subsequent to this meeting, there appears to have been discussions with a company called A C Bacon. How they came about is disputed, but matters not and that was about the transfer / purchase / employees obtaining employment through these third parties. For reasons not entirely clear, nothing came of it immediately and also there was the possibility of work at a company called One Site located at Lowestoft. The Claimant, perhaps understandably, did not want to go there because of the distance to travel.

20. The Claimant and other employees in the pool were advised there was to be one job alternative within the Respondent and that was titled as 'Yard Person' to assist with scrap processing, clearing the yard, processing Stockholding orders for profiling and folding and general fabrication and that would be offered to whomever scored the highest. If they did not want the job it would then be offered to the next highest scoring person and we see details of that at page 129 of the Hearing Bundle.

21. In or around 12 January 2021, the Claimant and other unsuccessful employees were advised of the decision to terminate their employment by reason of redundancy; with the Claimant we see that at page 135 of the Hearing Bundle. They were required to work out their notice in order to complete orders which were ongoing, but no new orders were being taken after 31 January 2021.

22. Unfortunately, around 25 January 2021, the Claimant was put on 'garden leave' as a result apparently of his attitude following the announcement of redundancies which was said to be obstructive in assisting colleagues, not answering telephone calls, making derogatory remarks about Standley Steel and not complying with the conditions for alternative work with interested parties, i.e. discussions with A C Bacon over aspects of the Respondents that apparently were not for sale.

23. The Claimant was given a right of appeal in his termination letter, but decided not to avail himself of that right.

The Law

24. The relevant law is set out very helpfully in both the Claimant's and the Respondent's Counsel's closing submissions.

Conclusions

25. The range of conduct that a reasonable employer would have adopted, firstly whether the selection criteria was objectively chosen and fairly applied. In the pool for selection, the starting point was a reasonable pool and that was conceded during the course of these proceedings. Particularly that Mr Daglish the Stockholding Manager and Mr Heyes the Lorry Driver, were not appropriate people to put into the pool. As for the selection criteria, the selection criteria inevitably does have some subjective criteria. In this case it was not unduly so, the criteria adopted was not unreasonable and the weighting was differently applied between Mr Ford and Mr Standley and also the scoring was independently assessed.

26. The difference in weighting in any event, would not have impacted upon the final decision. Furthermore, there is no evidence before this Tribunal that the scoring applied by either Mr Ford or Mr Standley was in some way capricious. Had it been so, it would have been unlikely to put the Claimant in second place with the possibility of Mr Nicholls not accepting the

alternative position which would then fall to the Claimant. The Claimant was warned on 4 January 2021 about possible redundancy, albeit short notice, but it is often the case whether it be large or small organisations. Clearly, there was from the minutes of the consultation meeting on 5 January 2021 with the Claimant, lengthy discussion about the redundancy, the possibilities including whether the Claimant could buy the structural side and discussions with third parties / companies about either taking on work or employees; particularly A C Bacon and One Site came up subsequently.

27. The Tribunal reminds itself that this was a small organisation with only 16 employees, five of which were to be made redundant. So there was always going to be limited alternatives to the decision to make them redundant. Clearly, in this case there was an alternative position of Yard Man and that was to be offered to the employer who scored the highest and that is not unreasonable in the circumstances.

28. Having regard to Section 98 of the Employment Rights Act 1996, redundancy is a potentially fair reason to dismiss. Clearly this was a case where the requirements to carry out work of a particular kind ceased or diminished. The Tribunal also has to consider Section 98(4), particularly having regard to the size and administrative resources of the employer's undertaking, whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and determine in accordance with equity and the substantial merits of the case. The Respondents could have given more warning and might have been more transparent about the scoring.

29. However, the Tribunal are satisfied that would have made no difference to the end result. Furthermore, the Tribunal noted that the Claimant did not avail himself of the right to appeal that was offered regardless of what the Claimant may feel about any appeal in the circumstances, any employee still has to take that opportunity to avail themselves of the chance to challenge the decision.

PUBLIC INTEREST and HEALTH AND SAFETY ASPECTS

30. The Tribunal have no doubt that the Claimant raised these matters, no doubt that they are qualifying disclosures, the Tribunal accepts that the public interest disclosures were made in the public interest. However, there is absolutely no evidence to support a causal link between the Claimant's dismissal and any such decision. The decision to dismiss was about redundancy and no other aspect, which equally applied to four other employees.

31. As to the alleged detriment, the Tribunal are not satisfied that the Claimant was subject to detriments of being ignored by Mr Standley, particularly as the Claimant said that he had a good working relationship with Mr Standley and got on well with him. Furthermore, Mr Standley for large parts of the time appears to have been off sick. For reasons that are fairly

obvious, the detriment the Claimant says of being put at risk of redundancy and the failure to properly consult and the failure to properly score and select for redundancy, just do not stand the test when one looks at the factual matrix in this case and the decision to close the structural side of the business.

32. Therefore those claims are not made out.

HOLIDAY PAY and UNLAWFUL DEDUCTION OF WAGES

33. The Claimant's claim for holiday pay and unlawful deduction of wages has been settled in the sum of **£576** and **£422.**

RESPONDENTS NOT PROVIDING THE SCORING RESULTS

34. The Respondents took the decision, given the fact that the parties were to remain in employment throughout their notice period, that to provide each individual employee with their scoring would be counter productive and would inevitably be discussed between each party and could cause friction between the parties.

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Employment Judge Postle

22/09/2022
Date: …….

10/10/2022
Sent to the parties on: .....

J Moossavi
.....
For the Tribunal Office.