



EMPLOYMENT TRIBUNALS

First Claimant: Mrs M Casey

**Second
Claimant:** Mr D Taylor

**Third
Claimant:** Mrs M Wood

Respondent: Manchester Hall Limited (In Voluntary Liquidation)

HELD AT: Manchester (via CVP) **ON:** 12th September 2022

BEFORE: Employment Judge Anderson
(sitting alone)

REPRESENTATION:

Claimant: Mrs Casey

Respondent: No Attendance

JUDGMENT having been sent to the parties on 15th September 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

Introduction

1. Three Claimants, Mrs Maureen Casey, Mr D Taylor and Mrs M Wood bring claims against their former employer Manchester Hall Limited.
2. The Respondent is in voluntary liquidation. No ET 3 has been submitted.

Procedural Matters

3. The hearing took place by way of CVP. All three Claimants were in the same room with one computer screen.
4. Three separate bundles had been provided, one in respect of each Claimant. Each bundle included a witness statement and a Schedule of Loss.
5. At the outset of the hearing, it was necessary to clarify a number of points that were apparent from the papers and correspondence that had been sent into the Employment Tribunal.
6. The first point was the claims that were before the Tribunal. The respective ET'1s contained claims for unfair dismissal. They also referenced age discrimination and it was confirmed that these were allegations of direct discrimination.
7. However, in the Schedules of Loss, sums were also claimed in respect of notice pay and accrued holiday pay. These claims were not in the ET 1. The Claimants accepted that these claims were not in the ET 1.

8. The Second point was the identity of the Respondent. The ET 1's stated

"Stephen Cliff

Manchester Hall Limited

36 Bridge Street

Manchester

Lancs

M3 3BT"

9. As per usual practice when a limited company is named as part of the details given at Box 2, that is treated by the Tribunal as the employer.

10. There was no second box completed suggesting that there was a second Respondent or that Mr Cliff was in some way being named as a Second Respondent.

11. That the case proceeded against Manchester Hall Limited only was dealt with in correspondence by the Tribunal.

12. Therefore, the identity of the Respondent was a point that had been determined prior to the hearing. In any event, it was evidently correct that the

Claimants had been employed by Manchester Hall Limited. Finally, the only ACAS Certificates related to Manchester Hall Limited.

13. Having noted that this point may not have been understood by the Claimants in subsequent correspondence, I took time at the outset of the hearing to identify that the case proceeded against one Respondent only, Manchester Hall Limited.

14. The second point was the fact that the company was in voluntary liquidation. As it was voluntary liquidation, this did not prevent the proceedings from taking place. However, this could make enforcing any award more difficult. It was not for the Tribunal to give legal advice on this point.

15. Thirdly, we then discussed the procedure that would be followed and how it would be necessary to establish the basic facts through witness and documentary evidence.

16. Each witness in turn took the affirmation and confirmed as true the contents of their witness statement. I asked each witness a number of questions in an attempt to establish the basic facts of this matter.

17. During the hearing, a significant point arose as the evidence of Mr Taylor was concluding. In answering one of my questions, he made passing reference to

receiving money from the government. Upon further questioning, it became apparent that an application had been made to the insolvency service for redundancy payments, notice pay and accrued holiday pay and that these sums had been received by all three Claimants. Yet, claims for these sums were in each of the Claimants respective schedules of loss. In addition, Mr Taylor was the third witness to be heard. I had already gone through with Mrs Casey and Mrs Wood their losses in the period following the dismissal and these sums had not been mentioned to me at all and I was therefore likely to be in a position whereby I was awarding compensatory awards to the Claimants to the point of voluntary liquidation without being told of the double recovery.

18.I deal further with the point in my findings of fact below.

Findings of Fact

19.I made the following findings of fact on the balance of probabilities.

20.Finally, in relation to credibility, it is necessary for me to record that I have had no reasonable explanation from any of the Claimants as to why I was not informed during evidence that payments of redundancy payments, notice and accrued holiday pay had been received from the Insolvency Service.

21.Given that this was a Rule 21 hearing, credibility would not normally be a significant point. However, this incident did place some doubt in my mind as to

the extent that I could rely on something stated to me where it could not otherwise be corroborated.

22. Mrs Casey commenced employment in September 2000. She describes her role as that of Freemasons Coordinator. Mr Taylor and Mrs Wood also had similar lengthy periods of service with the Respondent. In the case of Mr Taylor, he was employed as a handyman.

23. Each of the Claimants had written terms and conditions.

24. The Claimants were each placed on furlough in March 2020. They were initially to be made redundant from the 21st October 2020, but this was then extended along with the furlough scheme. They remained on furlough until they received emails dismissing them on 31st August 2021.

25. The Claimants suggest that during lockdown, communication with the company was limited.

26. I find that each of the Claimant's were employees and that they were dismissed. The reason for dismissal was redundancy.

27. Each Claimant was paid until the 31st August 2021. This was the effective date of termination.

28. There were less than 20 redundancies. This was not a collective redundancy.

29. On the 7th October 2021, liquidators were appointed.

30. The Claimants alleged that other people were still employed by the Respondent as of the hearing date. I explained that this was not possible as the Company was in voluntary liquidation. I said it was possible that people could be working at the same location, but that it would not be for the same Respondent as has been named in these proceedings. The Claimants did not have the necessary details or specifics to enable me to make basic findings of fact on this point.

The Law

31. The right not to be unfairly dismissed is contained within s.94 Employment Rights Act 1996.

32. Where an employee has more than two years continuous service, s.98(2) requires that any dismissal is for one of the listed potentially fair reasons. Redundancy is a potentially fair reason.

33. The requirement to act reasonably is contained within s.98(4) Employment Rights Act 1996. In redundancy cases, case law has developed requiring that the employer act reasonably in:

- a. Selecting the employee for redundancy
- b. Reasonably consulting with the employee

- c. Reasonably considering suitable alternative work
- d. Following a fair procedure.

34. Compensation for unfair dismissal is awarded on a just and equitable basis in accordance with s.123 Employment Rights Act 1996.

35. Age is a protected characteristic in the Equality Act 2010.

36. Direct discrimination is provided for in s.13(1) Equality Act 2010, which states:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

37. The burden of proof provisions in the Equality Act 2010 are provided for in s.136(2) which requires that:

“if there are facts from which the court could decide, in the absence of any other explanation, that a person(A) contravened the provision concerned, the court must hold that the contravention occurred.”

38. s.136(3) provides “But subsection (2) does not apply if A shows that A did not contravene the provision.”

39. In the leading case of Madarassy v Nomura International PLC [2007] IRLR 246 the Court of Appeal held that mere disparate treatment was not sufficient

'without more' as sufficient proof of prima facie discrimination. In other cases, Tribunals have been asked to look at 'the reason why' the treatment occurred as a way of discerning whether the act is discriminatory.

Conclusions

Age Discrimination

40. I find that none of the Claimant's have proven facts before me that could lead me to conclude on the balance of probabilities that there had been less favourable treatment based on age.

41. In the case of Mr Taylor during his oral evidence, it was apparent that he was not actively pursuing a claim of age discrimination. When I asked him if he was pursuing a complaint, he said "not really, no."

42. I find that what was before me was no more than a bare assertion of age discrimination. During the course of the evidence, I asked each Claimant to explain why this was age discrimination, but they were not able to do so beyond Mrs Casey and Mrs Wood repeating the assertion that they were dismissed because of their age and their view that Mr Ritche (the manager) had not treated them fairly. Mrs Casey said that they were capable of doing their jobs and that there was no reason to sack them.

43. There was some suggestion that comments were made, but I did not consider that these were in isolation sufficient upon which to decide the whole

redundancy exercise amounted to direct age discrimination. More was needed and I was simply unable to ascertain credible facts.

44. In so finding, I recognise that this was a Rule 21 hearing, but it is still necessary for there to be some evidence of discrimination in order to so find.

45. The Claimant's did not establish on the balance of probabilities a named comparator with 'no material difference'. Nor did the Claimants prove the dates of the alleged acts of discrimination.

46. If I were to apply a hypothetical comparator, there is no evidential basis as to why that comparator would have been treated differently to the Claimants.

Unfair Dismissal

47. I find that the reason for the dismissal of the Claimants was redundancy. This is a potentially fair reason for the purposes of s.98(2) Employment Rights Act 1996.

48. The Respondent did not follow a fair process in dismissing the Claimants.

49. There was very little by way of procedure. Whilst I am not completely clear that I have been provided with all of the relevant documents, I have found that there was no genuine consultation with any of the Claimants, no discussion as

to what the issues were and the ways in which redundancy could be avoided.

There does not appear to have been any selection process.

50. In these circumstances, the dismissal was unfair for the purposes of s.98(4) Employment Rights Act 1996.

Remedy for Unfair Dismissal

51. There is no basic award. The Claimants have received statutory redundancy payments. S.122(4) Employment Rights Act 1996 prevents the award of a basic award where a redundancy payment has been made.

52. This was a redundancy and the Respondent is in involuntary liquidation. There is no basis for a remedy of reinstatement or re-engagement.

53. The date of the appointment of liquidators was the 7th October 2021. Each of the Claimants notice periods (12 weeks), for which they have been fully compensated via the Insolvency Service exceeds the period between the Effective Date of Termination and the date of voluntary liquidation. Therefore, the Claimants have not had any financial loss between the effective date of termination and the date in which the company went into voluntary liquidation.

54. It is not possible for the Claimants to have been employed by this Respondent at a point past the voluntary liquidation.

55. There is no other named Respondent in the proceedings as a company who should be liable. There is no pleaded claim that there was a TUPE transfer between the named Respondent and another company. I would also note that the Claimants have received redundancy payments and notice pay. I can only deal with the pleaded case before me, nor can I descend into giving legal advice to the parties before me.

56. In short, there is no proper basis either in fact or law upon which I am entitled to award compensation to these Claimants beyond the date of the voluntary liquidation of the Respondent.

57. I do not make any award in respect of loss of statutory rights. If a fair procedure had been followed then the Claimants would have been fairly dismissed by reason of redundancy in any event by the voluntary liquidation of the Respondent. The statutory rights accrued would have therefore been lawfully lost in any event.

58. I recognise that the lack of compensation will disappoint these Claimants, but it may be some comfort to acknowledge that if there was any compensation it would likely have been enforceable only as an unsecured creditor against the insolvent company and therefore it may make no practical difference.

**CASE NUMBERS:2414920/2021
2414921/2021
2414922/2021**

Employment Judge Anderson
Date 10th October 2022

REASONS SENT TO THE PARTIES ON
21 October 2022

FOR THE TRIBUNAL OFFICE