Case No. 3313417/2020

EMPLOYMENT TRIBUNALS

Claimant: **Ms Josephine Anne Joanne O'Reilly**

Respondent: **Luton Irish Forum (Company Limited by Guarantee & Registered Charity**)

HELD AT: **Watford** (By Video Link) **ON:** 7, 8 and 9 November 2022

BEFORE: **Employment Judge R S Drake**
Mr P Maclean
Mr D Wharton

REPRESENTATION:

Claimant: In person
Respondent: Ms J Letts (Tribunal Advocate)

JUDGMENT

1. The Respondent has satisfied the Tribunal that redundancy was the reason it had in mind for dismissal of the Claimant for the purposes of Section 98(1) and (2) of the Employment Rights Act 1996 ("ERA").

2. The Tribunal is satisfied that in accordance with the substantial equities and merits of the case, and thus for the purposes of Section 98(4) ERA, the Respondent acted reasonably in all the circumstances in relying upon redundancy as a sufficient reason for dismissal and that, in relation to the procedure adopted by them, they acted reasonably. Thus, the dismissal of the Claimant was fair and her complaint is dismissed.

3. The Tribunal is satisfied that the Claimant has not established that the Respondent discriminated against her by treating her unfavourably because of something arising from her disability as defined by Section 15 of the Equality Act 2010 ("EqA") and her claim under this head fails and is dismissed.

4. The Tribunal is satisfied that the Claimant has not established that the

Respondent, contrary to Section 21(1)(3) EqA (being the only basis upon which she makes this claim), failed to fulfill its duty under Section 20 EqA to make reasonable adjustments by taking such steps as it was reasonable to take to avoid disability based disadvantage, and her claim under this head fails and is dismissed.

5. The claims of unfair dismissal and detriment in respect of alleged public interest disclosure and/or victimisation contrary to Section 27 EqA were withdrawn and are dismissed.

REASONS

6. This is a unanimous Decision which we now express with Full Reasons. We refer in this Judgment to page numbers in what was presented to us as an agreed evidence bundle (e.g. **PP1-573**). The fact that in this Judgment specific page numbers are quoted denotes the fact we have paid special attention to them, but otherwise we confirm having read all documents referred to us and all statements. We also refer to numbered paragraphs in the three witness statements from -

    6.1 The Claimant herself ("**C**");

    6.2 Ms Noelette Hanley, the Respondent's CEO ("**NH**");

    6.3 Mr Thomas Scanlon ("**TS**"), the Respondent's Chairman and a Charity Trustee. The Respondent ("**R**") is constituted as a Company Limited by Guarantee and is a Registered Charity.

7. Given we were made very aware of **C**'s physical disability and its effects, we were at pains throughout to ensure that **C** could proceed despite her impairments, and also to do so with assurance as to equality of arms by me doing the following: -

    7.1 explaining procedure at all stages;

    7.2 explaining the law relevant to her claims;

    7.3 taking breaks when requested and necessary to enable **C** to collect her thoughts and to cope with her physical difficulties caused by her disability;

    7.4 taking breaks to ensure **C**'s sometimes less than effective electronic connection could be remedied/restored, and by asking her to confirm she understood questions and could give answers (often necessarily repeated) on occasions when it was apparent there may be connection difficulties;

The Issues

8. EJ Tobin issued agreed Case Management Orders (which he explained in detail especially to the Claimant who was then and today unrepresented) at a Telephone Preliminary Hearing on **1 March 2022**. Inter alia, he required the parties to agree a List of Issues which now appear at **PP45-48**. The case was listed for video link ("CVP") which we infer was because of **C'**s disabilities which **R** do not challenge. She has impairments (with which we sympathise as appropriate) more particularly described in an Occupational Health & Ergonomic Assessment Report dated 23 January 2019 at **PP293-366** ("the OH Report")**.** We summarise them, without diminishing their significance thereby, as a broad range of chronic myalgic pain in muscles and joints affecting her whole body. **R** accepts without demur that **C** has and had at all material times a disability, but they assert they took steps to accommodate **C**'s needs for adjustments to be made.

9. With regard to the allegation of unfair dismissal, it was for **R** to establish whether redundancy was the reason its management (through the medium of its CEO NH) had in mind for **C'**s dismissal, for the purposes of section **98(2)(c) ERA**, and thereafter it was for the Tribunal to determine whether redundancy was a sufficient reason for dismissal and that the dismissal was fair in respect of the procedure adopted for the purposes of section **98(4) ERA**, all of which entailed consideration of the following:

    9.1 Whether **R** failed to consider or identify an appropriate pool for selection, failed to adopt fair and objective criteria for selection, failed to take account of all relevant issues, or did not apply selection scoring fairly – but all these issues were not ultimately argued by **C** at this hearing, so were taken as accepted;

    9.2 For **C,** a significant issue was that she believed that there was no need to declare her position redundant and that funding for the job she was doing could continue to a date beyond the date on which her employment terminated i.e. 29 July 2020;

    9.3 Whether **C**'s representations were not properly taken into account;

    9.4 Whether **R** failed to take adequate steps to identify alternatives for **C**;

    9.5 Whether the consultation process with her was not fair or reasonable;

10. Again under the heading of whether dismissal was unfair, the List of Issues agreed by the parties (**PP45-48**) posed two further questions:-

    10.1 Did **R** have a genuine need to make redundancies within the workplace: and –

    10.2 Was there a genuine redundancy situation? This requires in this case specifically examination of the statutory test in Section 139(1) ERA which is - "whether the dismissal was wholly or mainly

attributable to (a) … or (b) the fact that the requirements of R's business

(i) For employees to carry out work of a particular kind
(ii) ….
– had ceased or diminished or are expected to cease or diminish"

I have added our emphasis and only quoted relevant parts of the Section.

11. With regard to **C**s complaint that she suffered discrimination as defined by Section 15 EqA, her argument was that she was dismissed because **R**'s dismissing officer **NH** was as she put it "fed up" with accommodating **C**'s disability. We recognised that a prima facie case had to be made out by **C** and that if such were established, then the burden of proving some other reason rested with **R** and that if **R** established that their reason was redundancy, **C**'s Section 15 claim must fail. In this respect, we were guided by the CA decisions in **Igen v Wong [2005] IRLR 258** and again in **Madarassy v Nomura [2007] IRLR 246**

12. With regard to **C**'s S20 and 21 EqA claim ("reasonable adjustments"), we recognised that the issue was (and she accepted that under this head it was limited to): -

12.1 Did **R** operate a provision, criterion, or practice ("PCP") which put C at a substantial disadvantage in comparison with persons who are not disabled?

12.2 **C** relies on the following:-

12.2.1 A requirement, as part of the Objectives of an alternative role of Office Manager ("OM") which she was offered on trial, to walk through **R**'s building to carry out inspections;

12.2.2 A requirement as part of the same trial to interact with staff members, volunteers, and others despite her being clinically vulnerable

12.3 Therefore, we considered the question of whether R was under a duty not to impose such requirements and did R have a duty to make reasonable adjustments and failed to make them.

13. It was noted at the outset that **C** had to recognise that her claim for unfair dismissal under S98 ERA pure and simple could not succeed as she did not have two years continuous service as at the effective date of termination of her employment. Further she recognised that her reliance on having given evidence in previous proceedings pursued by another ex-employee about whistleblowing was not itself whistleblowing by **C** herself, and further that her ex-colleague's claims were not pursued under EqA, so therefore **C** could not

rely on this in a potential claim of victimisation, since it did not constitute a protected act under Section 27 EqA. Therefore she accepted these claims had no prospect of success and should be dismissed by withdrawal at early stage.

The Facts

14. The Tribunal found all the witnesses to be sincere and candid. We are not finding anyone was not telling the truth, because instead we make findings based on our assessment of a balance of probability. Thus, we simply prefer the testimony of one witness over another where conflicts of evidence were apparent, and we explain why. Therefore, with regard to the issues to be determined, the Tribunal unanimously made the following specific findings of fact relevant to its conclusions:-

    14.1 **R** is an eponymous Social Forum (providing social outlet/meeting facilities generally, and project based advice to "clients") set up as a Charitable Trust, operated by professional staff which runs the business of **R**. It is led by Trustees who have overall legal responsibility for the organisation. **TS** is the Trust Chairman and **NH** its CEO. **C** had been employed by **R** some years before the period in question in these proceedings, but for the purposes of these proceedings she was engaged from 15 June 2015 until dismissed with effect from 29 July 2020. Her role was that of Customer Services Officer ("CSO");

    14.2 **R** seeks and receives project funding from a number of different sources (e.g. The Irish Government, the National Lottery and others particularly during the Covid-19 lockdown period) which is predicated to project and not overhead cost of the organisation and may not be sued for any purposes other than the specific projects; On the other hand, the organisation provides room hire for client events, and the net revenue from this is the sole source of funding of administrative and overhead costs such as **C**'s the salary; **C** accepts this but contests whether sufficient funds could be expected to be received to cover the cost of her salary when the effects of the lockdown began to bite in early Summer 2020;

    14.3 **C** was held in high regard by **R** and its officers, but she has serious myalgic problems which **R** accepts amount to disability, one of the effects of which are that she suffers extensive pain even when working with adjustment, and has to cope with reduced mobility;

    14.4 From lockdown in late March 2020 onwards, **R** had to close its premises to clients and hirings, and to scale down its operation significantly (**NH** para 8 refers) – **PP379-399** show a reduction in room hire revenue from in excess of £3,000 to £700 in a space of from March to September 2020; **C** sought to challenge the inferences one may draw from this evidence but we found it persuasive and indeed compelling as it shows what actually was happening financially around the period of consultation with **C** and her eventual dismissal. It is

further supported by the most compelling evidence being the end of year accounts (**PP501-514**) for the year ended 31 March 2021 which are compelling since they are externally prepared and audited for the purposes of making public statements of them via their filing at Companies' House and the Charity Commission. These accounts show (**P505**) that the revenue from room hire for this period was £4,175 which was explained to us by **NH** amounted to the overall total revenue but net of overhead and administrative costs and this making only marginal contribution to the likelihood of being able to sustain **C**'s salary. This figure is a dramatic reduction from the same heading in the previous year's accounts being £31,660 (**P277**).

14.5 **C** relied on the basic listing of invoices (**P529**) for room hires (which included some which derive from a later period after her dismissal), but what was compellingly explained to us by **NH** under cross examination was that this represents a total gross figure not net of overheads and administrative costs and is therefore not a valid base figure on which to calculate likelihood of continuation since it spans the dismissal and goes further into the rest of the accounting year after dismissal when circumstances changed;

14.6 **NH** explained, and we also find this compelling, that though after **C**'s dismissal, **R** decided to open again, it did not open to room hires, the viability of which being still sensitive whilst clients were still nervous about returning to semi public gatherings in confined spaces;

14.7 The Forum opened to its advice and individual social clients but room hires were still scarce and we are satisfied that even now have not returned to the levels previously developed immediately before March 2020 lockdown; We are satisfied that during Summer 2020 R had to assess the likelihood of maintain revenues going forward into Autumn and Winter 2020 at a time of utmost uncertainty and had to cut its cloth to meet its expected funding despite the hope that the situation might, but only might improve later in the year.

14.8 **C** looks at the situation with the benefit of hindsight, but even then, bases her thinking on erroneous inference from a basic invoice list and not audited full accounts. Overall we find that **NH** was better placed than **C** to know or have a meaningful idea of future needs and future likely levels of funding as she saw the whole picture, whereas **C** saw the picture only as she felt it affected her and was naturally less cognisant than **NH** about the totality of what might be expected;

14.9 We find that even before lockdown, **R** had made some administrative posts redundant (**NH** para 9) because of reductions in funding from such sources as Luton Airport, the Ireland Fund of Great Britain, the Irish Youth Foundation and others; When lockdown started, **R** secured some limited emergency funding but even before starting consultation with **C** on 12 June 2020 had to contemplate the likelihood

of having to reduce administrative costs not supported by predicated funding which included assessing requirements for work to be done of the kind done by **C** and thus the possibility her post could be redundant; We are entirely satisfied thus that even before lockdown, re-assessment of requirements was within **NH'**s thinking but no conclusions reached.

14.10 We find that lockdown merely accelerated the process of re-assessment and then identification of the fact **C**'s post could be at risk; We are not satisfied with **C'**s argument that at any stage before consultation began, a final decision had been made about her employment, since we distinguish rightly between redundancy of a role and dismissal of an employee because of redundancy;

14.11 Much popular mythology has developed, that we find is erroneous, which in the minds of employees equates the concept of "redundancy of post" to inevitable "dismissal because of redundancy"; The two are not the same and a reasonable employer should look to alternatives to dismissal before reaching a conclusion to dismiss and we find that this is precisely what this R did;

14.12 There had been numerous meetings between **C** and NH from 4 January 2019, 4 February 2019 (**PP68-71**) at which **C**'s OH Report was discussed, adjustment identified and recorded, ending on 14 February 2019 (**PP460-461**) when it is recorded that adjustments so far were accepted by both **C** and **NH**. At this latter meeting the notes taken record the following:-

14.12.1 "**NH** made it clear she was upset with **C** giving her grievance to the Tribunal (in a different employees claim) NH was not happy with some of the contents in **C**'s letter to the Tribunal that **NH** did not agree with. **NH** said it was business sensitive not to be shared. **C** said she had legal advice and could not discuss the Tribunal and that **NH** should not be discussing the case with her"

14.12.2 We conclude form this **NH** was unhappy about a private matter being aired in another person's Tribunal claim, not that she had given evidence per se. We also see that this expression of unhappiness appears not to have influenced any subsequent dealings between **C** and **NH** (it appears nowhere else in the evidence before us), so we feel it safe to conclude that it had no bearing on **NH**'s thinking about the viability of **C**'s post. We preferred **NH**'s testimony to that of **C** which was based on her subjective uncorroborated perception.

14.13 **C** says that at a Review Meeting (**PP114-115**) between her and **NH** on 12 June 2020 she was specifically and expressly told by **NH** "I am making you redundant" and that this was the first warning but was couched in terms of being a definite already concluded decision. **NH** vigorously denies this and we accept her denial. It would be strange to take such detailed steps as were taken to trial an alternative job for **C** if a decision had already made to terminate her employment. We accept that **NH** sought not to dismiss **C** even though she believed the existing role (CSO) held by **C** was financially unsustainable;

14.14 We note the many references in subsequent records of **R**'s Finance and HR meetings (**PP86, 89, 111, 143, 146**) that **C'**s post was either not referred to as redundant as such, but was unfunded beyond July 2020, and/or was at worst "at risk" and she was being offered alternatives on trial, all of which do not appear to us to be post facto contrivance and thus they negative any suggestion of prejudged outcome;

14.15 **C**'s main argument however remains that she contested the economic and organisational wisdom of restructuring and the genuineness of what **R** says are changes to the levels of responsibility of local management roles; We concluded for reasons of application of law set out below that it was not open to **C** to say **R** was wrong about how it proposed to structure its workforce on the face of both a pre lockdown need to re-assess its functions and post lockdown imperative to cut cost; We could only make such a finding if we also found no reasonable employer would choose to manage its workforce roles/functions in the way this **R** did so;

14.16 Another area of challenge submitted by **C** was that she believes **R** could have put her on furlough as it had done other employees but not her; We find that **R** did furlough an employee whose function would be needed as a unitary function when re-opening would at last become possible, namely a cleaner;

14.17 However, we also find that **C** makes a comparison here which is not apt since her post was one whose functions could be redistributed, it was not unitary and was furthermore potentially redundant before lockdown as found above; We note that the furlough scheme was not designed or intended to shore up potentially redundant posts to but to preserve employments in posts which were capable of being sustained;

14.18 A further challenge raised by **C** was that she believed that if R had only held out until September, her post could have been funded thereafter following reopening of the Forum; We accepted the testimonies of both **NH** and **TS** that re-opening was only ever contemplated as being and was in fact only very limited, and did not envisage or include room hire (the principal source of **C**'s salary) to the

scale of what it was before lockdown; Furthermore, emergency funding to cover the CSO role was only likely to last until September and it was apparent that though limited re-opening might be possible what could not be foreseen but what could not be overlooked of worsening of the national Covid contraction level to the extent that by October 2020 further lockdown became necessary thereafter;

14.19 We find that **NH** reported to **R'**s Finance Committee (**PP123-124**) that consideration had been given to all of **C**'s financial representations aimed at justifying keeping her post or securing internal and external funding for it, but did not agree with her analysis of what their needs were and what was likely to happen in the medium and longer term future; We do not find that it acted unreasonably but simply disagreed, as they were entitled to with **C**'s views; We accept that they were better placed to reach their conclusions about the financial realities than was **C**, as she only saw part of the overall picture;

14.20 Following the three consultation meetings referred to above (**PP 122-131**, **PP133-139** and **PP141-142**) the fairness of which not being challenged by **C**, she agreed that she had been offered a number of options for alternative roles but was willing only to consider the new role of OM; **C** and **NH** discussed objectives for this role and at **C**'s behest, **NH** modified **R**'s expectations as to what **C** could do by reducing the time burden of certain tasks such as undertaking site inspections;

14.21 **C** believed these could not be done given her physical condition but NH believed that if time were not limited and with assistance, the walk rounds could be safely undertaken and thus made adjustment of the objective as such; However, in **NH**'s estimation **C** only partially fulfilled the objectives set which subject to the modifications agreed were themselves in effect agreed, notwithstanding we can see **C** did not like them and accepted them grudgingly;

14.22 **C** also asserts that by requiring her to have contact with other staff and clients during the trial period was unreasonable given that she was shielding and working from home; We accept **NH**'s explanation that this objective was capable of being modified by limiting such contact so as to minimise face to face contact and that she made c aware of this but it was still not acceptable to **C**; As we read the objectives (PP232-234) the details of required personal contact are capable of being read as possible without or with only minimal face to face contact and possible if fulfilled remotely;

14.23 The only challenge as to failure to make adjustments lies in the area of modifications to the trial period objectives; We are satisfied there was no want of discussion about those objectives and debate as to whether they were fulfilled;

14.24 We are also satisfied that the fact that **NH** agreed to modify the objectives indicates she was acting sincerely and was doing as much as we would expect of a reasonable employer in the same circumstances;

14.25 When it was apparent to **NH** that the OM alternative, not being a like for like alternative (the offering and acceptance of which would be obligatory), was not successful, she concluded that the trial had not be successful and moved to dismissal (**PP179**); We accept that this was not prejudged nor a rush to judgment as such;

14.26 **C** appealed the decision to dismiss her and her appeal came before TS as Chairman of Trustees; **C** appeared to challenge his involvement as he is mentioned in various Committee and Trust Meeting Minutes, but we accept his testimony that he was merely kept informed as he should be for governance purposes on a "need to know" basis, but that he took no part in the decision making process correctly delegated to **NH** – in this respect we found his testimony compelling and do not regard him as being impeachable in respect of the appeal process merely by knowing how the matter had progressed to that stage;

14.27 We are satisfied that **TS** undertook the appeal process sincerely (**PP192-199**) and took time to reach his conclusion without rushing to judgment; TS upheld the decision to dismiss and dismissed the appeal; We see that **C** sought to change or comment on the Minutes of the appeal hearing but does so on the same erroneous bases upon which she challenged **R**'s views about its actual and expected financial position which she argues became better than expected with the benefit of hindsight; She still does not cover the issue of what appears in the audited accounts and did not appear to challenge them in the appeal; **C**'s challenge even at appeal appears still to be that she is entitled to say she knows better than **R** how to structure and pay for its workforce – we deal with that point when discussing the law below.

The Relevant Law on Redundancy

15. The Tribunal had regard to section 98(1) and (2) ERA 1996 which provides as follows:

"In determining … whether the dismissal of an employee is fair or unfair it is for the employer to show the reason, or the principal reason for the dismissal, and that it is either a reason falling within subsection (2)… and a reason falls within subsection (2) if it (c) is that the employee was redundant."

16. If the Tribunal is satisfied that the Respondent has discharged this onus of proof, it is then for the Tribunal to consider under subsection (4) of section 98…

"The determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer -

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 -

that question shall be determined in accordance with the equity and the substantial merits of the case."

17. Our attention is drawn to S139(1) ERA which provides as follows:-

"*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) …
(b) The fact that the requirements of that business
(i) For employees to carry out work of a particular kind
(ii) ……
- Have ceased or diminished or are expected to cease or diminish"

We recognise that the key elements of this statutory provision are clarified for us by HHJ Peter Clark in the EAT's decision in **Safeway v Burrell [1997**].

18. The Tribunal's attention, as always, is drawn to the guidance given by the EAT in the seminal case of **Williams v Compair Maxam Limited [1982] EAT**. It sets out the standards which are intended to guide Tribunals in determining whether a dismissal for redundancy is fair, which (in paraphrase) requires that "employers should give as much warning as possible of impending redundancies so as to enable employees to take steps to inform themselves of relevant facts and consider possible alternative solutions; employers should consult about the best means by which the desired management result can be achieved fairly and with as little hardship to employees as possible, including (though this is not relevant in the present case) agreement of criteria and the application thereof; selection criteria should, of themselves, be fair and reasonable and reasonably applied; and that where so far as possible selection does not depend solely upon the opinion of one person and thus selection is made fairly in accordance with fair criteria, taking into account representations made by affected employees".

19. The Tribunal is as always urged to note, and it did indeed take account of the following guidance from the cases listed below:

18.1 **Eaton Limited v King [1995] EAT** which is authority for the proposition that in selecting employees to be made redundant a senior manager is

entitled to rely on assessments of employees made by those having direct knowledge of their work; In this case selection was limited to one post as only one post was at risk i.e. C's. No distinguishing selection was necessary;

18.2 **Kvaerner Oil & Gas Limited v Parker [2003] EAT** which is authority for the proposition that a Tribunal should not substitute its view as to the identification of an appropriate pool for that of the employer;

18.3 **Capita Hartshead Limited v Byard [2012] EAT** in which reference was made to the judgment of Mummery J in **Taymech v Ryan [1994]** which is authority for the proposition that the question of how a pool should be defined is primarily a matter for the employer to determine, and that it is true that the employer has considerable latitude in redundancy selection cases and that a Tribunal must not overstep the mark and impose what it would have decided. Rather, the Tribunal does have power and right to consider the genuineness of a pool, but it is not the function of the Tribunal to decide whether it would have thought it fairer to act in some other way. It is appropriate for a Tribunal to consider whether the dismissal in the case in question falls within a range of conduct which it is reasonable for the employer to adopt. In terms, it is difficult for an employee to challenge the identification of a pool where the employer has genuinely applied its mind to the problem and as in this case recognised a pool of only one person i.e. C.

Conclusions in respect of Redundancy

19 It is not open to a Tribunal to find that a dismissal is unfair because the employer acted unreasonably in choosing to make workers redundant. This proposition of law was made abundantly clear by the EAT in the decision of **Moon v Homeworthy Furniture (Northern) Limited [1976]**. This approach was also adopted by the CA in the case of **James W Cook & Co (Wivenhoe) Limited v Tipper [1990]**. Thus, in relation to a redundancy dismissal, the basis upon which a Claimant may legitimately challenge a decision to dismiss is on the method of selection and the consultative process which is clear and elaborated in the above-mentioned propositions of law.

20 In **Jones v BT Utility [2020] UKEAT/0237/19** the EAT again advises that where an employee challenges the fairness of a redundancy dismissal by pleading (1) it is a sham, or (2) there was no genuine redundancy situation, and/or (3) was otherwise unfair, it is important to examine the issue of (1) sham or (2) lack of genuineness of the redundancy situation. However, it is clear that on this latter point (2), the EAT does not interfere with the existing authorities which limit the extent to which a Tribunal may second guess a management's decision to declare a post redundant by in effect requiring lower Tribunals to satisfy themselves that a reason for redundancy is established but not whether they agree with it so long as management's conclusion is not such that no reasonable management could have reached that same conclusion. Thus R's argument succeeds, so long as in this case **R** shows that it did give genuine attention to the question of whether **C's** post could be sustained, they thus had a genuine reason

for concluding her post was redundant even if she did not agree. What they have to show as they do in this case, is that at the time they made their decision the situation falls squarely within the S139(1)(b) ERA definition of cause for dismissal which is statutorily inferred as being because of redundancy. This being the case, we find R has established redundancy was the reason for C's dismissal (not that NH was fed up as asserted by C) which is a positive finding and renders obviated any potential other finding such as a reasoning arising from disability.

21 We conclude when applying the **Safeway** guidance in this case, that a job or role is a package of different tasks, and that it is open to an employer to consider then redistribute those tasks and plan to and then re-organise roles, leading to no diminution of work in terms of volume of work to be done as such, but a different way of requiring that work to be done i.e. different requirements. Thus its requirements for work to be done in the way **C** did her job is something **R** was free to consider restructuring and that can lead to a genuine redundancy situation affecting her role.

22 C challenges a number of aspects of NH's decisions on behalf of **R**:

22.2 She asserts she was told at Review Meeting 12 June 2020 (**PP114-115**) that she was going to be made redundant; We have found otherwise;

22.3 She asserts that if NH had accepted the financial analysis of the funding of her role, there would be sufficient to cover her pay upto the date R's Forum was set to re-open in September 2020; We have found otherwise;

22.4 The consultation was a sham and a decision not only to make her position redundant but also to dismiss her was a foregone conclusion from the date of her Review; We have found otherwise;

22.5 The consultation process was not genuine, meaningful and unblemished by pre-judgment; We have found otherwise;

22.6 The process of offering and considering other posts for **C** was a sham; We have found otherwise;

22.7 Setting of objectives in a different alternative post which was not a like for like equivalent to the redundant post, was unrealistic and designed to set her to fail and was thus a sham; We have found otherwise;

22.8 Moreover, not making adjustments to the objectives by setting them without modification amounted to a failure to make reasonable adjustments; We have found otherwise.

23 We recognise but when an employer tells an employee that she is at risk, it is saying, as we find in this case, that her position is at risk but not necessarily her overall employment. In this particular case we have found as fact that this **C** was told her position was at risk but then she could apply for other posts, so from this we conclude that **R** did not jump to an immediate conclusion about **C**'s future employment until they had given her a chance to trial the alternative post. We

regard this as being a sound basis for concluding that **R** did what I would expect another reasonable employer to do.

24. We also recognise that when an employer tells an employee that her position is at risk, this can cause enormous stress for the employee and that is it is in her and everyone's best interests that, once started, a consultation process comes to a speedy conclusion allowing for sufficient opportunity for dialogue in between the start and the end. In this case, the process started on 12 June 2020 and effectively finished 29 July 202015 September.

25. We find that consultation was undertaken over a reasonably long time period but that in any event, for the facts as we have found them, **C** did have ongoing dialogue with NH which included what amounts to meaningful consultation. Thus, we cannot find any insufficiency of consultation or prejudgement as to outcome either in duration or in content when compared to what we would expect from another reasonable employer.

26. We find that **R** succeeds in showing redundancy was the reason they had in mind for dismissing **C**, that they were entitled to reach that conclusion, they acted reasonably in so doing and reached conclusion we would expect of another reasonable employer. Furthermore we find that **R** did not have in mind anything to do with **C**'s disability and nor that dismissal was caused by **NH** being fed up with **C**. **R** succeeds but **C** fails in respect of these heads.

Relevant law in respect of discrimination

27. Section 15 EqA provides as follows:-

"(1) A person (A) discriminates against a disabled person (B) if

- *(a) A treat B unfavourably because of something arising in consequence of B's disability – and*

- *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim … "*

28. Sections 20 and 21 EqA provide (being the only parts relevant to these claims) as follows:-

"*20(2) - The first requirement is a requirement, where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage relevant matter in comparing with persons who are not disabled to take such steps as it is reasonable to have to take to avoid the disadvantage …*

"21(1)(a) - A failure to comply with the requirement is a failure to comply with the duty to make reasonable adjustments …"

Conclusions in respect of discrimination complaints under S15 and S20-21 EqA

29. The Tribunal is satisfied that **R** acted reasonably in seeking to find alternatives to dismissal and were unable to do so because **C** could not fully meet the objectives set of her. She says they were unreasonable and unmodified. We have not so found. We have found that the objectives were adjusted by making those objected to by **C** non-time specific and allowing her as much time as she needed to do walk rounds, and they limited so far as possible and reasonably practicable any interaction with other parties. These were the only areas which c required be adjusted, but this does not dimmish the fact that she has not challenged the fact that she did not fully meet the other objectives which were all role specific and not so particular to **C** herself as to be tainted by being contrived so as to make fulfilment of objectives impossible for her. Therefore, the Tribunal finds that

29.1 Dismissal of **C** was for a fair reason namely redundancy and not because of NH being allegedly fed up;

29.2 Reasonable adjustments had been made to accommodate C's disability

30. Therefore, we find that **R** did not fail to comply with its Section 20 EqA duty, so **C**'s claim in this respect also fails.

Employment Judge R S Drake

Signed 09 November 2022

JUDGMENT SENT TO THE PARTIES ON

9 December 2022

N Gotecha

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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