



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Morley

**Respondent:** Lancasters Property Services Limited

**HELD In Leeds by Cloud Video Platform (CVP) ON: 13 September 2022**

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr J Searle, Counsel

## JUDGMENT

1. The claimant's claim for a redundancy payment is hereby dismissed.
2. The claimant's claim for notice pay is hereby dismissed, the same having been paid to the claimant.
3. The claimant's claim for holiday pay is hereby dismissed, the claimant having received her due holiday pay.

## REASONS

### 1. Claim

- 1.1. The claimant claims a redundancy payment.

### 2. Issue

- 2.1. The sole issue in this case is, having made the claimant redundant and indeed before the claimant was made redundant, did the respondent make the claimant a suitable offer of alternative employment and did the claimant unreasonably refuse it? In very general terms the offer was a proposal to move the claimant from the office in Stocksbridge to the Penistone office.

### 3. The law

The Tribunal has to have regard to section 141 of the Employment Rights Act 1996, which is a complex section, but the essence of which is that if the respondent makes a suitable offer of alternative employment and the claimant unreasonably refuses it the claimant will lose her right to a redundancy payment.

### 4. Matters occurring at the beginning of or during the hearing

- 4.1. It was agreed that there were no time limit points.
- 4.2. It was agreed that the claimant was no longer employed by the respondent.
- 4.3. The principle that the claimant was redundant was agreed by both parties.
- 4.4. There was no claim for unfair dismissal.
- 4.5. The claimant had made a claim for notice pay but this had now been paid.
- 4.6. The claimant had made a claim for holiday pay but this had now been paid.
- 4.7. The witness Miss Beaumont it was agreed should not be called during the respondent's evidence in chief and only after the claimant's evidence if necessary. She was not called.
- 4.8. After Mr Crossfield, the witness for the respondent, gave his evidence, the Tribunal agreed, on the application of Mr Searle to a 10 minute adjournment. When Mr Searle came back he was critical of the manner in which I had questioned the witness Mr Crossfield. I explained that whilst the respondent was represented by counsel and solicitor the claimant was unrepresented, so that this was effectively a matter of equality of arms. Mr Searle said that I had questioned Mr Crossfield for one hour. Having looked at my notes I in fact questioned him for 44 minutes. Mr Crossfield could have shortened his giving of evidence had he given more direct answers of the Tribunal in the first place. Mr Searle asked for another 15 minutes to take instructions. I gave him 20 minutes. On his return nothing more material was said.

### 5. The facts

**The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):**

The claimant was employed as a branch manager by the respondent from (taking into account a TUPE transfer) 1 January 1998 until on or about 21 June 2022. The respondent is in the business of property management.

- 5.1. There came a time when the Stocksbridge office of the respondent would no longer be available to trade for the foreseeable future and the claimant was, therefore, to be placed at risk of redundancy. This was confirmed to her on 12 May 2022.

- The claimant was invited to attend a first consultation meeting (there were three) to take place on 18 May 2022.
- 5.2. During the consultation meeting Mr Crossfield took the meeting and explained to the claimant that the respondent had found a suitable alternative role working at the Penistone branch.
  - 5.3. It was agreed that the respondent would send the claimant an offer letter. This was incorrectly dated 20 August 2021 but the Tribunal finds that the letter was sent on or about 18 May 2022. The offer to the claimant was as Manager Stocksbridge. The location was indeed to be at the Penistone office but the claimant was to have manager status and a small increase in salary.
  - 5.4. The claimant was offered a statutory trial period but she declined that offer.
  - 5.5. There was another consultation meeting on 25 May 2022, by which time the claimant had rejected the offer.
  - 5.6. A final consultation meeting took place on 9 June 2022.
  - 5.7. In the light of the claimant's rejection of the offer the respondent made the decision to end the claimant's employment by reason of redundancy on 20 June 2022. There was a termination letter on that date and the letter set out the reasons why the claimant gave for not taking up the offer.
  - 5.8. The issues mostly but not completely turned on the question of distance between where the claimant was working before (Stocksbridge) and where she lived on the one hand and Penistone on the other.
  - 5.9. There was a bus service from Stocksbridge to Penistone. There was one bus in the morning from Stocksbridge to Penistone at 8.00am taking 30 minutes. The claimant accepts that it was possible to catch that bus to go to work at Penistone. The return bus was at 4.30pm, the claimant finishing work at 5.00pm, but it was never explored between the parties as to whether there might be flexibility in the claimant leaving work so she could catch that bus. We find as a fact that there was only one way possible for the bus on the evidence available.
  - 5.10. Could the claimant work from home? The claimant maintained during consultation and before the Tribunal that it would be difficult because the claimant's husband was at home with the grandchildren. Indeed the claimant told us that she would never work from home as it would affect her mental health. But it transpired that of the two grandchildren the 18 month year old only came to the house once a week and the six year old went to school and, therefore, only came home in school holidays. Therefore the claimant conceded to the Tribunal that she could work from home when the 18 month year old was not there and when it was term time.
  - 5.11. The claimant could go to Penistone by car when her husband did not need the car, which would include when he was looking after

the grandchildren and also she could visit her elderly family when working from home during the lunch hour as she had been doing before. See more of these two issues below.

- 5.12. It was examined as to whether the claimant could go to Penistone by taxi. The claimant did not want to do this in winter. In any case she told us that the taxis came from Sheffield or Barnsley and they were unreliable and too far away. She said there were no Ubers and the local taxi man had retired without being replaced.
- 5.13. I have referred above to the elderly relatives of the claimant if the claimant were working from home and that would mean when she was at home and would put her in at least as good a position as if the claimant was working in Stocksbridge. As before round the corner from the claimant lives the claimant's 91 year old mother in a care home. She was and could be visited three times a week. As before the claimant could also do the cooking for her 91 year old father-in-law.
- 5.14. Breaking from the issues of geography for the moment I refer to the job descriptions which the claimant received during the process, the existing Stocksbridge branch manager and proposed Stocksbridge manager. Those were the titles and the terms, which the claimant accepted, were broadly the same, the difference being, before the claimant ran her own branch, but the claimant accepted that the job description before and after were more or less identical. It should be understood however that neither of these job descriptions were in existence during the period when the claimant was actually working as branch manager of the Stocksbridge branch.
- 5.15. The claimant accepts that the distance from her home to Penistone is 3.8 miles and takes 9 minutes by car. The distance from the claimant's home to Stocksbridge is 1.1 miles and 4 minutes by car. The claimant agreed with these statistics but emphasised that they were old country roads, no street lightening and no pavements on the way to Penistone.
- 5.16. The claimant could and did walk from her home to Stocksbridge when she was working there in around 20 to 25 minutes but walking to Penistone was not an option.
- 5.17. The claimant shares the car with her husband and driving she said was her preference. Her husband has first choice in relation to when he takes the car but when he is not working and at home the claimant confirmed that she could agree with her husband to take the car.

**6. Determination of the issues**

**(After listening to the factual and legal submissions made by and on behalf of respective parties)**

- 6.1. Was the offer suitable?
- 6.2. The offer was of equal status and very similar terms. The big difference would be the claimant would not be a branch manager and she would have to travel to Penistone instead of Stocksbridge.
- 6.3. In her evidence the claimant told the Tribunal that she could in certain circumstances work from home which was part of the offer by the respondent and she also confirmed that she could on some days in certain circumstances drive to Penistone.
- 6.4. That means that despite the stance the claimant took she was actually capable of doing the new job if she wanted to.
- 6.5. The Tribunal finds that the job was a suitable offer of alternative employment and that having regard to the admissions made by the claimant, concerning working from home and use of the car, before the Tribunal finds that she did unreasonably refuse the offer and therefore her claim is dismissed.

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Employment Judge Shulman

Date: 4 October 2022

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