EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr H Wynne	**v**	**Fitness 24 Limited**

Heard at: Watford Employment Tribunal (by CVP)
On: 2 December 2022
Before: Employment Judge Forde

Appearances
For the Claimant: In person
For the Respondent: Mr Joshi, advocate

JUDGMENT

1. The claimant's claim of unfair dismissal is unfounded and dismissed.

REASONS

1. By way of a claim form received on 3 March 202 the claimant pursues a claim of unfair dismissal against the respondent.

2. The respondent is a franchise operator of the "Anytime Fitness" brand operating out of two sites in England. This claim concerns the operation undertaken at its Aldershot site within which the claimant was employed. At the time of the claimant's dismissal it employed four staff.

3. The claimant was employed by the respondent as a Membership Advisor having started his job on 9 December 2019 until the date of his dismissal on 4 March 2022. His dismissal was stated to have been redundancy by the respondent. However, the claimant claims that he was unfairly dismissed by the respondent because he believes that the redundancy was not the genuine reason for his dismissal and/or that the dismissal process was unfair.

4. The tribunal had the benefit of the claimant's statement on behalf of the respondent evidence was offered in the form or written and oral evidence from Mr Graham Carter and Mr Callum Deegan who had been managers of respondent's Aldershot gym at different times during the course of the claimant's employment as well as Mr Andrew Nolan a director and the operator of the respondent.

The law

5. Redundancy is defined in s.139(1) of the Employment Rights Act ("ERA") 1996. It has a broad definition and can cover the situations where that the requirements of a particular business for employees to carry out work of a

particular kind or for employees to carry out work of a particular kind in the place where the employee was employed by the employer has ceased or diminished or expected to cease or diminish. If the conditions of redundancy are satisfied then it will be considered to be a fair dismissal as listed in s.98(2)(c) of the ERA 1996. However, it remains open to an employee to argue that his or her redundancy dismissal was unfair for one of the following reasons:

- The dismissal was not by reason of redundancy, but was instead for a reason that is not potentially fair under s.98(1) or (2).

- Although a redundancy situation existed, the employee was selected for redundancy for a prohibited reason, meaning that the dismissal was automatically unfair pursuant to s.105 ERA 1996, or

- Although a redundancy situation existed, and the employee was not selected for an automatically unfair reason the dismissal was nevertheless unreasonable under s.98(4).

Findings of fact

6. The onset of the global covid 19 pandemic in early 2020 had a devastating effect on the leisure sector and consequently on the respondent. In evidence, Mr Nolan, the respondent's director and operator described that the respondent's business at its Aldershot site had diminished to the extent that by the time it had reached April 2021 it had lost approximately 40 percent of its membership. Pre-pandemic the business was making approximately £35,000 per week. However, when it reopened in April 2021, it was turning over £18,000 per week. Additionally, during the period it was forced to close, the respondent was not receiving any income but its costs remained constant including in respect of rent and service charges which still need to be paid.

7. The loss of revenue to the respondent had a potentially catastrophic effect on Mr Nolan personally. In October 2021 the respondent's landlord issued Mr Nolan with a bankruptcy notice in respect of personal guarantees he had provided on behalf of his business to its landlord due to the fact that the respondent was unable to service its debts and in particular the cost of rent and service charges that had accrued. It was said and it was not in dispute that the respondent was confronted with a serious financial situation at this time.

8. At its Aldershot Gym, the respondent employed four people namely a manager and three others including the claimant. Having weighed up and considered its needs, the respondent considered that it was to make one person redundant from a pool of two. Its decision on pooling had been to place together its two staff members who undertook membership advisory services one of whom was the claimant but it reached this decision having made the commercial decision as to the future direction of its business. Specifically, the respondent evaluated as a whole its workforce and during its evaluation process it focused on the performance of the services it provided to the public. The respondent decided that it should focus on the quality of its service provision which in turn meant that apart from the

manager of the site, the other person excluded from the pool was the fitness coach.

9. The respondent then conducted a consultation process which consisted of four individual steps including a risk scoring exercise which was conducted in conjunction with the claimant who raised concerns in relation to a series of his own individual scores. At the conclusion of that process, and having reviewed its business and trading strategy, the claimant was made redundant.

10. I find that respondent had considered, in the circumstances of the claimant's redundancy and within the totality of its size and resources all suitable steps and savings that it could have made as a direct consequence of a dire financial situation it was confronted with.

11. In due course the claimant appealed his dismissal and at the appeal held by Mr Deegan, his dismissal was upheld.

The law – Unfair dismissal

12. I find that the respondent had a potentially fair reason to dismiss the claimant pursuant to s.98(2) (c) ERA 1996, namely redundancy. Redundancy is a potentially fair reason for dismissal and in all the circumstances the respondent acted reasonably in treating that reason as a sufficient reason for dismissal. Redundancy was the genuine basis for the claimant's dismissal.

13. Contrary to the claimant's assertion that the redundancy process was unfair, I find that the fact that the respondent engaged with the claimant with regards to his scoring and other matters arising during the course of the redundancy consultation only serves to underline the fact that the respondent conducted a rigorous exercise before deciding that the claimant was the person to be dismissed.

14. In all of the circumstances (having regard to the equity and the substantial merits of the case and the size and administrative resources of the respondent's undertaking) the respondent acted reasonably in treating the redundancy as a sufficient reason for dismissing the claimant and by seeking to mitigate the effects of dismissal by taking all reasonable steps to find him alternative employment. In particular, enquiries had been made of the claimant prior to the redundancy process as to whether or not he was interested in undertaking a training course which would enable him to become a fitness instructor. The claimant's response to this enquiry had been to say that he did not wish to and that he did not see his long-term future with the respondent. Additionally, the respondent offered the claimant the right to appeal against the decision to dismiss him and considered his appeal.

15. In all of the circumstances, I find that the claimant's dismissal was fair and accordingly, I find that the claim is unfounded.

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Employment Judge Forde

Date: 19/12/2022

Sent to the parties on: 5/1/2023

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For the Tribunal Office