



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr M Forsbrey**

**v**

**Flitetec Ltd**

**Heard at:** Watford Employment Tribunal by CVP  
**On:** 29 and 30 November 2022  
**Before:** Employment Judge Forde

## **Appearances**

**For the Claimant:** Mr Woodman, Solicitor  
**For the Respondent:** Mr Perry, Counsel

## **JUDGMENT**

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

## **REASONS**

### **Introduction**

1. By way of a claim form received on 10 November 2021 the claimant pursues a claim of unfair dismissal arising from his dismissal by the respondent on 30 June 2021 by Mr Lee the respondent's Managing Director.

### **The parties**

2. The respondent manufactures and distributes spare and replacement parts for all types of aircraft interior products, including seating components, cabin products, helicopter interiors and soft furnishings. It is a small employer currently employing around 14 staff.
3. The claimant was employed by the respondent as Senior Sales Account Manager from 12 March 2018 until 30 June 2021 when the respondent terminated his employment. At the time of the termination of his employment, the respondent stated that the reason for his dismissal was for reason of redundancy, a position it maintains within these proceedings.

4. The issue for the tribunal to determine in this claim was whether the claimant's dismissal was unfair. In the circumstances of this case unfairness amounts to an assessment as to whether or not the claimant's dismissal was for the respondent's stated reason of redundancy or for another lawful reason or, as the claimant contends, for another reason which is unlawful. This section of the Act covers three broad scenarios namely the closure of the business, closure of the workforce, and where there is a diminishing need for employees to do the available work.
5. The claimant claims that he has been unfairly dismissed. For the purposes of this hearing, the tribunal must determine what was the principal reason for the claimant's dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA"). The respondent asserts that the reason for the claimant's dismissal was redundancy.
6. If so, was the dismissal fair or unfair within s.98(4), and in particular, did the respondent in all respects act fairly and reasonably; in other words, was it reasonable for the respondent to have dismissed the claimant in the circumstances it has identified.
7. For the claimant's claim of unfair dismissal, the focus under s.98(4) was on the reasonableness of the management's decisions, and it was immaterial what decision I would have made had I been in the situation that confronted the respondent at the time it reached the decision to terminate the claimant's employment.

### **Findings of fact**

8. The relevant findings of fact are as follows. Where I have had to resolve any conflicts of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed bundle of documents.
9. The claimant's employment with the respondent commenced in March 2018. At that time, the respondent's focus was on manufacturing and selling new and repaired interior products made from plastic such as seat backs and metal tray tables. The claimant had been specifically recruited to secure new business from existing and new customers, predominantly airlines and original equipment manufacture or "OEMs" as they are known.
10. However, the respondent's business plans took a hit from the covid 19 pandemic which had a devastating effect on the tourism and travel industry and consequently on the respondent. The reason behind this is because almost all flights ceased and airlines were not operating. Given that airlines constituted the respondent's main area of business, the pandemic had a catastrophic effect on the demand for equipment required for airplanes. The actual impact on the respondent was significant in that it lost around 70 percent of its revenue. However, it was able to continue trading as a result of small sales to OEMs and helicopters.

11. Due to the pandemic the respondent was affected in a number of ways. First of all, it furloughed its staff including the claimant in April 2020 under the government's coronavirus job retention scheme ("CJRS"). The respondent continued to pay its staff 100 per cent of their salaries. Second, the respondent continued to engage in a continued review of its business strategy and set about the implementation of a new strategy to keep its business afloat and generate new business. The consequent effect of this new strategy was that it kept an eye on what costs could be cut and where. Third, the respondent made a number of its staff redundant in autumn 2020 namely five employees who worked on the assembly area of the respondent's manufacturing business, the same part of the business that the claimant was employed within.
12. In summer 2020, the claimant was moved on to flexible furlough to enable him to undertake some work for the respondent. Nonetheless, sales opportunities proved few and far between. At this time, the claimant was the only person employed by the respondent, the respondent's other salesperson, Ms B, had been dismissed for gross misconduct in May 2020 after it had been found that she had sent confidential business information to a third party and did so in breach of her terms of employment.
13. The relevance of Ms B in these proceedings became an important feature of the evidence in this case. Specifically, it was the case that Ms B and Mr Lea exchanged text messages of a private nature between each other which appear to only become to light following Ms B's dismissal. It was the claimant's case that on or around the time of Ms B's dismissal, the respondent in the form of Mr Lea became aware of the fact that the claimant was in knowledge or perhaps had possession of some of the text messages that travelled between Mr Lea and Ms B. The claimant alleged as part of his case that his relationship with Mr Lea nosedived to the extent that it was the case that he considered that Mr Lea was bullying him and treating him badly. The ultimate consequent effect of the treatment that the claimant contended that he received from Mr Lea was his dismissal. However, I was unable to make any finding of any causal connection between Mr Lea coming into knowledge of the claimant's possession of the messages I have just described and his dismissal. In other words, I have found that the reason for the claimant's dismissal was for redundancy and no other reason. I go on to explain why further on in this judgment.
14. Concerns were raised about the claimant's performance in early 2021. Specifically, the respondent had formed the view that the claimant had not been generating sufficient material revenue or was unable to produce a strategic plan which inspired sufficient confidence within the respondent to the extent that he was capable of arresting the significant decline in sales as regards the respondent's manufacturing business.
15. As time went on, matters became increasingly more serious for the respondent. As part of its business and trading strategy, the respondent decided to re-enter the distribution market and started to distribute products such as nuts, bolts, washers, lamps and bearings to businesses within the aerospace industry. This provided the respondent with an additional source

of revenue. The respondent contended and I accept that the sale of parts in the way that the claimant had undertaken required a very different set of skills and connections to consultants engaged by the respondent to undertake sales within its distribution division. I also find that the two consultants that the respondent engaged to undertake sales within its distribution division performed substantially well and justified their retention. It is clear that they contributed substantially to the financial wellbeing and ongoing viability of the business.

16. Nonetheless, in spring 2021 the respondent's leadership team identified that in addition to implementing its new strategy to bring in revenue from other sources that further cost savings needed to be made. The respondent identifies itself as a small business and had hitherto taken substantial steps to identify costs savings that it could make. At this time, it identified that further costs savings could be achieved by a reduction in head count. It identified the claimant's role of Senior Sales Manager as a role that could be made redundant. It did so on the basis that other employees who formed part of the senior staff budget namely the Quality Manager, and the General Manager, both fulfilled tasks which formed part of the respondent's legal and regulatory requirements. The other senior member of staff apart from the claimant was a manager who handled procurement on behalf of the respondent and maintained the significant workload. By contrast, the respondent had identified the claimant had struggled to generate business and as such, the respondent had significant concerns as to whether or not the claimant would be able to generate sufficient business so as to justify his continued retention. As a result, the claimant's role was placed at risk of redundancy.
17. I find that as the claimant was the sole salesperson employed by the respondent at this time within its manufacturing division and its sole employee undertaking sales work, the pool of employees at risk of redundancy was limited to the claimant.
18. Mr Lea led the consultation process with the claimant on behalf of the respondent. The claimant was informed that his role was at risk of redundancy on 14 June 2021 and this was followed by two further meetings on 21 June and 29 June 2021, to consult with his about whether it was possible to avoid redundancy of his role, or if it was not, whether there were any other suitable vacancies for which he could be considered. At this time, the respondent was recruiting for a Sales Executive role, a role which was below that of the level of the claimant's employment. This was discussed with the claimant during the course of the consultation process and it was explained to the claimant that because the role was one which existed within the respondent's distribution division that if the claimant was interested he could apply for the role. However, the claimant declined to be considered for the role which was offered at a significantly lower salary than his existing role.
19. At the end of the consultation process the respondent formed the view that its requirement for employees to carry out the particular work carried out by the claimant as Senior Sales Accounts Manager had diminished to the

extent that his role was redundant and, on 30 June 2021, the claimant's role was made redundant. The respondent had to consider all other ways and means to avoid the claimant's dismissal by way of redundancy but it was unable to avoid what was clearly inevitable given the substantial financial downturn that the respondent had suffered as a consequence of the decline and demand for its manufacturing goods.

20. The decision to make the claimant redundant was taken by Mr Lea. The claimant was paid in lieu of his notice period and received a statutory redundancy payment as well as a payment in respect of his accrued but untaken holiday. He received a letter confirming his dismissal and informing him of his rights of appeal against the decision to dismiss him.
21. On 2 July 2021 the respondent wrote to the claimant after discovering the claimant had emailed confidential business information to himself on 16 June 2021. In due course, the claimant confirmed to the respondent that he deleted this document having first denied that he had sent a document to himself.
22. On 3 July 2021, the claimant appealed the decision to dismiss him. A key plank of his appeal was in relation to the issue of messages exchanged between Ms B and Mr Lea. It set out the basis of the claimant's contention here. The respondent was unable to make a finding that supported the claimant's contention that the reason for the claimant's dismissal was in fact due to animus between himself and Mr Lea. In fact, the respondent treated this particular element of the claimant's appeal as a grievance which was not upheld. The grievance was dismissed as well.
23. The claimant appealed against his dismissal and the grievance outcome both of which were not upheld for the reasons previously given.

#### **Relevant law and conclusions – unfair dismissal**

24. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of a complaint to the tribunal under s.111. The employee must show that she was dismissed by the respondent under s.95 but in this case the respondent admits that it dismissed the claimant by a reason of redundancy (see s.139 ERA 1996 above).
25. As I have already set out, s.98 of the Act deals with the fairness of dismissals. There are two stages within s.98. First, the respondent must show that it had a potentially fair reason for the dismissal within s.98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal the tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
26. In this case, it is in dispute that the respondent dismissed the claimant because it believed that his position had been made redundant. Redundancy is a potentially fair reason for dismissal by way of s.98(2)(c) of

the 1996 Act. For the reasons set out above, I find, on the balance of probabilities, that the claimant was not dismissed because of the issue that he says arose between him and Mr Lea as a result of Ms B's dismissal. I find that the respondent not only dismissed the claimant for a potentially fair reason namely redundancy but also that the respondent has satisfied the requirements of s.98(2).

27. Section 98(4) then deals with fairness generally and provides that the determination of the question of whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 shall be determined in accordance with the equity and substantial merits of the case.
28. In this case, I find on the balance of probabilities that the respondent dismissed the claimant for the stated reason of redundancy. It is abundantly clear as I have found that the respondent faced very serious financial difficulty during the course of the pandemic for reasons that are widely known; the aerospace industry and its related industry of travel and tourism suffered substantially as a direct consequence of the pandemic. Accordingly, I find that the work of the kind undertaken by the claimant had diminished to the effect that the respondent was entitled to make him redundant. Further, I find that Mr Lea absorbed the claimant's work, a factor of itself which justifies the respondent's decision to make the claimant redundant.
29. Further, I find that redundancy was the sole reason for the claimant's dismissal and that the claimant's dismissal was fair in all the circumstances. Specifically, the claimant makes the claim that the redundancy consultation exercise was unlawfully executed to the extent that it was an inevitable consequence that the claimant would be dismissed. Among his criticisms in this regard is the fact that the claimant was placed in a pool of one and by extension, that his dismissal was inevitable. However, for the reasons I have set out above I do not agree with the claimant's analysis. I find that it was not possible for the respondent to pool anyone else with the claimant because:
  - (a) other senior managers within the respondent's employment were of legal or regulatory importance and could not be dismissed;
  - (b) The remaining senior manager was required by the respondent to undertake procurement activities, and;
  - (c) others engaged by the respondent to undertake sales within its distribution business were consultants and not employees and therefore were not capable of being considered as being part of the respondent's employees.
30. In other words, the claimant was the only person who could be pooled and therefore it was clear that the respondent had undertaken all steps that it

could to consider alternatives to the claimant's redundancy and undertake a suitably rigorous decision-making process which ultimately led to the decision to make the claimant redundant.

31. For the reason that I have set out above, the claimant's claim of unfair dismissal fails and is dismissed.

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Employment Judge Forde

Date:24/12/2022

Sent to the parties on:19/1/2023

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For the Tribunal Office