EMPLOYMENT TRIBUNALS

Claimant: Mr R Islam

Respondent: Loomis UK Ltd

Heard at: Watford Employment Tribunal

On: 17 & 18 October 2022 - Deliberation 28 November 2022

Before: Employment Judge Allen, Mrs Jaffe and Ms Harris

Appearances

For the Claimant: In person, unrepresented but assisted by his brother

For the Respondent: Ms Duane of Counsel

RESERVED JUDGMENT

1. This claim is not well founded and is dismissed.
2. The claimant accepted he had in fact received the holiday pay owed to him and withdrew that part of his claim.

REASONS

The Claim

3. The claimant claims he was unfairly dismissed because:

    3.1 The respondent used an unfair process of selection for redundancy
    3.2 He was discriminated against because of his religion, and
    3.3 There was an inadequate appeal process against the redundancy decision.

4. Effective date of termination was 31 December 2020.
5. ACAS was notified of the claimant's claim on 3 February 2021, the certificate was issued on 16 February 2021.

6. The claim was filed with the tribunal on 8 April 2021 and is within the statutory time limits. This tribunal has jurisdiction to hear it.

Findings of Fact

7. The claimant identifies as following the Islamic faith.
8. The Respondent is a nationwide cash management business providing secure cash delivery and collection services including replenishment of automatic teller machines (ATMs).
9. The claimant was employed as a driver/custodian between 11 August 2014 and 31 December 2020 at the Respondent's Dunstable depot (also referred to as driver/guard in some of the documentation).
10. The Respondent suffered a dramatic down turn in demand for its services when in 2020, as a result of the Covid 19 pandemic, many businesses went over to cashless transactions.
11. The Respondent was obliged to cut its' national workforce by 48% and in 2020 embarked on a process of phased redundancies. The claimant was made redundant during phase 2.
12. The need for redundancies is not disputed by the claimant however he asserts he was unfairly selected. He asserts further unfavourable treatment in that:
    12.1. He was notified of the consultation meeting 1 day later than his colleagues and had insufficient time to prepare;
    12.2. His August 2020 application to reduce his hours was not dealt with and would have saved his job if it had been.

The Redundancy Process

13. The Respondent has recognition agreements with two unions, GMB and Unite, both were consulted about the redundancy process and signed off on the selection criteria.

Phase 1

14. Phase 1 Redundancies took place in August 2020. The respondent made 312 employees redundant.
15. All parties agreed the claimant did not meet the threshold for selection in phase 1 and was not required to engage in the consultation process.
16. The claimant implied the respondent used the redundancies to dispose of problematic members of staff because of the six staff made redundant from the Dunstable Depot in phase 1:
    16.1. Five were Muslim,
    16.2. All had in excess of five years' service, one in excess of 20,
    16.3. The Muslim staff used work facilities for prayer during working hours, and the non-Muslim had health problems.
    16.4. Two non-Muslim members of staff, each with less than two years' service were retained in that phase.
17. No evidence was produced on which the tribunal could conclude that the use of work facilities for prayer during work hours was considered problematic by management.

18. The same matrices were used for phases 1 & 2 only the breakpoint thresholds changed. Phase 1 looked at employment records over 2 years, this was reduced to 1 year in phase 2.

Phase 2

19. The phase 2 redundancy process took place in November 2020. The respondent needed to reduce its workforce by a further 263 staff. The aim was to identify and retain those employees who were most versatile and valuable to the Respondent going forward.

20. The depot manager, MK supported by the HR department, reviewed employee records over the preceding 12 months and scored staff using the agreed matrix accordingly.

21. MK was made redundant in January 2021 under phase 3.

22. A breakpoint of 19 was set for phase 2. All driver/custodians at the Dunstable depot were scored against the matrix and 18 who did not pass the breakpoint were selected for redundancy including the claimant.

23. Consultation meetings took place on 11 November (a group meeting) and 2 December 2020 (a 1 to 1 meeting between MK and the claimant). Union representatives attended both meetings.
24. Staff were sent invitations to the group meeting on 9 November. There was a typographical error in the email address of the invitation sent to the claimant. We have seen this email and are satisfied the respondent intended the claimant to be invited. There was no evidence on which we could conclude the claimant was deliberately excluded (Bundle pg. 64-5). The first consultation meeting had to happen on that day because the same meetings were happening at the respondent's depots across the country at the same time. To do otherwise would have risked the message being spread by rumour. It would not have been reasonable to postpone the meeting for the claimant. In any event he attended the meeting and had an opportunity to respond which he did by email on 12 November. He also had a 1 to 1 consultation with MK on 2 December so the delay did not make the process unfair.
25. The tribunal was provided with documents for this phase including:
    - 25.1. the scoring matrix,
    - 25.2. consultation material
    - 25.3. the claimant's scoresheet
    - 25.4. scoresheets for a number of other employees. The claimant identified these individuals as comparators. They were scored higher than him. The claimant asserts they were similarly skilled and should have been scored the same.
26. The claimant asserts he should have received a higher score and not been selected for redundancy in phase 2. He made no comment on how he might have fared in phase 3.
27. The claimant wrote to MK the day after the consultation meeting (12 November) reminding him that he had requested a reduction in hours back in August 2020. The claimant made 2 alternative proposals to redundancy;

27.1. that he be allowed to reduce his hours from 4 days per week to 3 which would save the respondent money; or

27.2. that the respondent gives him an additional 3 months' salary on top of any redundancy payment.

28. Having met with MK on 2 December the claimant emailed him the following day informing him he intended to appeal his redundancy. The claimant had received a copy of his score sheet and concluded he would be made redundant.

29. The claimant scored 16 and was issued with a redundancy notice on 8 December 2020.

30. The claimant considered that length of service ought to be of paramount importance in the selection criteria. The respondent only factored in length of service where more staff were selected for the redundancy pool than they needed to make redundant. We see this regarding one employee who received a score of 19 (the breakpoint) but was considered for redundancy because of his short term of service compared with others who had the same score. He scored the highest amongst those in the redundancy pool. Ultimately, he was not made redundant as another employee volunteered for redundancy (who scored 22).

31. No score was awarded for length of service in the selection matrix. Scores were awarded for attendance and conduct together with scores for specific skills either performed or training received in the preceding 12 months. The scores were weighted so that the score for skills made up 60% of the calculation, attendance and conduct made up 40%.

32. Additional scores were awarded for job specific qualifications and versatility. Versatility was awarded where there was evidence of willingness to perform different functions outside normal roles e.g., providing training to colleagues. Having had the opportunity to review some of the scoresheets we concluded MK was consistent in how he applied the versatility score with one exception discussed below.

33. A number of employees who received scores for ATM and Safepoint (the claimant's skills) also received scores for versatility and qualifications. We were shown a number of these scoresheets together with evidence that explained the additional scores and demonstrated clear differences between them and the claimant.

34. One of the employees had scores for ATM, Cash in Transit (CIT) and Safepoint but did not receive the versatility score. MK conceded this was a mistake. The claimant asserted this was evidence the whole process was flawed. The tribunal concluded this employee could be distinguished from the claimant because he accumulated sufficient points to pass the breakpoint on his other skills alone and did not in our view undermine the process.

35. The claimant asserted that because his surname was Islam it ought to have been obvious to the respondent that he was Muslim. Applying that logic to the 18 employees in the selection pool for redundancy one other had a name typically recognised as Muslim; a third, not selected for redundancy

in that phase also had such a name. The Respondent did not collect data on its employees' religions.

Scoring for the Claimant

36. The claimant was awarded maximum scores for attendance and conduct but challenged his skills score. His overall score was 16 having received maximum scores for ATM and Safepoint, he was not awarded any points for CIT or versatility.
37. Nine others received the same score as the claimant some with longer service than he.
38. The tribunal have no difficulty in accepting that the claimant had done CIT in the past however, his evidence as to when was inconsistent. MK gave evidence he awarded skills score for CIT if the work had been performed or trained in the preceding 12 months. During the hearing the claimant stated he had done CIT in the preceding 12 months and at one point stated it was within 6 months. The tribunal noted that he said this after MK gave evidence about the 12-month window. We saw an email from the claimant to DB dated 3 December 2020 that accepted it was probably right when MK told him he hadn't done it in 2 years (Pg75) since this was so close to the redundancy process, we conclude it is more likely than not to have been accurate. In the letter which accompanied his tribunal claim form the claimant concedes he had not done CIT in the last 12 - 24 months. In the circumstances we accept MK's evidence that the claimant had not done CIT work in the preceding 12 months.
39. The claimant also argued that he had performed some elements of the 'vault' role and should have received a score for that work too. MK pointed out that whilst it was true the claimant did perform some vault tasks that role requires security clearances for some tasks which could only be performed by someone who had received the training and been signed off by an official trainer. The claimant had not done that training or been signed off. The role included high security tasks including holding keys to the depot/vault, opening up and checking that no staff were under duress (threatened into breaching security protocols to facilitate theft).
40. During the appeal process, discussed below, the claimant identified a number of comparators whom he asserted had the same skills as him but who were not made redundant. We were provided with their scoresheets and MK gave a close analysis of their circumstances compared with the claimant. We are satisfied that the matrix was applied consistently and do not agree with the claimant's argument that these employees should have received the same scores as him.

Versatility Scoring v Comparators

41. The scoresheets carry an explanation of how 'versatility' and 'qualification' scores should be applied. In her email of 13 January 2021, DB gives an additional description of how the versatility score should be applied (Bundle pg. 115). Both DB and the scoresheets indicated those who were multi skilled with additional qualifications would receive the versatility score.
42. MK described how he had applied these additional scores. We concluded he was consistent in his approach. He said employees needed 3 skills to

get the versatility score. He conceded the claimant may have done CIT on occasion but he had not done the training in recent years and it was not therefore on his employee records. We conclude that in the circumstances he would not have been entitled to scores for CIT or versatility.

43. The claimant challenged his scores and complained that the respondent did not revisit them when asked. We accept the evidence of the respondent on this point. We heard the respondent reviewed the claimant's score sheet together with the comparators he identified. Whilst there was a mistake on RI's score sheet (Bundle pg. 181-2) we have no difficulty in finding the process was fair. The claimant raised this point in his subsequent appeal and we note the outcome was delayed by 10 days to enable JC, the Appeals manager to carry out checks. In his outcome letter JC confirms he checked the scoresheets of the claimant, all employees made redundant and the score sheets of the additional employees the claimant identified. He found no grounds to conclude the process was unfair.
44. The claimant also complained that the respondent failed to offer him alternative employment. Bearing in mind the company had to slash its staff by 48% there were few if any alternative roles to offer. Where there were, they were advertised and it was for employees to apply. It would have been patently unfair to have given one of those vacancies to the claimant without a formal competition when 16 other drivers were also being made redundant at the Dunstable Depot alone. The claimant explained that he did see the advertised roles but chose not to apply.

Application to reduce hours

45. The claimant asserts he applied to reduce his hours from 4 days to 3 during phase 1 but never received a response. We know very little about phase 1 but we heard unchallenged evidence from the claimant that there was a deadline to apply for reduced hours in that phase. We have seen the original email application for reduced hours to facilitate a university course and support the claimant's mother at medical appointments (Bundle pg. 270). During the appeal the claimant was told that it was likely his application was overlooked because HR was dealing with the redundancies of a large number of other staff (Bundle pg. 121-2). The tribunal concludes it is more likely than not that was the reason. Since the claimant was not selected for redundancies in phase 1 his application was not treated as a priority. Given the sheer volume of staff the respondent had to review, that it focused its' resources on employees who were facing redundancy and ignored those who were not is understandable if not excusable.
46. We find that whilst this could have amounted to unfavourable treatment there was no detriment to the claimant arising from it because PH amended the rota to ensure the claimant was free on the days he indicated he needed to be for his course (bundle pg. 267). We heard no evidence that his ability to support his mother at medical appointments was compromised.
47. On 3 December 2021 and in response to the claimant's email sent that day DB replied to address a variety of issues including the reduced hours (Bundle pg. 80, 98 & 99). Her email repeats the information about reduced hours contained in the consultation documents and does not in our opinion specifically address the claimant's issue.

Appeal Process

48. The claimant appealed the redundancy decision and was invited to a meeting to be held on 20 January 2021 (postponed from 14 January). The meeting was chaired by JC, the area operations manager and appeal manager.
49. At the meeting the claimant was invited to identify those employees he said should not have received higher scores than him and to provide examples to support his contention that he had been discriminated against.
50. We are satisfied the appeal process was fair. The claimant was given ample opportunity to prepare for the meeting, be accompanied and set out his concerns.
51. Following the meeting the appeal manager reviewed a significant number of scoresheets as set out above and found no grounds to overturn the redundancy decision.
52. JC wrote to the claimant on 2 February dismissing his appeal. The outcome letter is detailed and carefully explains why the claimant's appeal was dismissed.

Any other unfavourable treatment?

53. The claimant gave evidence that KS promised another employee that she would train him and make him full time. Incidentally this employee has a name which applying the claimant's own logic is typically associated with the Muslim faith. The claimant gave evidence he asked MK for this training but it was never provided. MK gave evidence he did not recall being asked. This was not included in the claimant's statement or claim form but offered by him during his oral testimony. This assertion is unsupported by evidence and we cannot conclude this is evidence of discrimination on the basis of religion.
54. The claimant first raised his concerns about religious discrimination on 10 December 2020 although he conceded during his appeal that this was based on his feeling and could not point to specific evidence. In the circumstances the only avenue open to the respondent was to review the process to see if there was any evidence of inconsistency of approach to Muslim staff members. This was done and no inconsistency or unfairness identified at all.
55. MK was made redundant in phase 3 and we cannot see any advantage to him in using the process to jettison 'problematic' employees as suggested by the claimant. We heard no evidence on which we could conclude the respondent found the claimant or any other employee 'problematic'.

The Law

Unfair dismissal

Employment rights act 1996 Section 98

(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show -

(a) The reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this section if it -

(c) Is that the employee was redundant

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -

(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case.

Redundancy

Employment rights act 1996 section 139

(1) 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 too -

(a) the fact that his employer had ceased or intends to cease -

(I) carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business -

(I) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

Conclusion

56. The claim for holiday pay was withdrawn
57. Was the main reason for termination of the claimant's contract redundancy? We concluded that it was. That Redundancies were necessary was clear from the evidence and unchallenged.
58. Did the respondent act reasonably in treating this as a sufficient reason to dismiss the claimant? The claimant argues that the process was unfair and that the Respondent did not act reasonably on the following grounds:

58.1. The claimant received less than 48 hours' notice of the first consultation meeting. We are satisfied that there was a typographical error in the email address for the claimant. We conclude there is nothing sinister in the error. This did not make the redundancy process unfair as the claimant attended the meeting and provided his comments in an email on 12 November. In addition, he had a 1to1 consultation meeting with MK and followed that with an email. The proposals he made in those emails were addressed but rejected.

58.2. Being unfairly scored under the scoring matrix. This was limited to whether the claimant ought to have received points for CIT and versatility. We found the claimant's evidence inconsistent on when he had last done CIT work. We preferred MK's evidence based as it was on employee records reviewed for the redundancy process. Emails sent by the claimant at the time conceded MK was probably right when he concluded the claimant had not performed CIT in 2 years. In the circumstances there are no grounds on which we could conclude he was unfairly scored since the criteria was that points were awarded for those who had been trained or performed the work in the preceding 12 months. We heard from MK how he awarded versatility scores and are satisfied that his approach was consistent.

58.3. The claimant alleged that the respondent failed to properly investigate his feeling that the reason he was selected for redundancy was based on religion. The courts recognise that such discrimination can be difficult to spot. The respondent reviewed the application of the matrix and concluded the claimant's selection was consistent with his colleagues. On that basis we do not find that the respondent failed to investigate.

58.4. The claimant was not offered suitable alternative employment. Given the upheaval at the company at this time such vacancies where they arose were advertised and employees were free to apply. The claimant gave evidence he chose not to. Given the significant numbers facing redundancy in the respondent's workforce to single the claimant out for special treatment would have been unfair.

58.5. Failure to respond to the claimant's request to reduce his hours. We found that this had the potential to be unfavourable. The respondent should have responded however we heard that he was not selected for redundancy in phase 1 which was going on when he applied. Given that there was significant upheaval within the respondent company at the time it is understandable that the focus was on employees who were to be made redundant and the claimant's application was overlooked. This does not excuse the failure to respond but had no impact on his eventual redundancy in phase 2. Since the claimant's score was within the zone selected for redundancy reduced hours would not have made a difference. There was some discussion about whether he needed another person to effectively job share to make a difference to his position but since no one else did the question does not arise.

58.6. We concluded that the Respondent ran a fair redundancy process. It agreed the scoring matrix with the unions and we found no evidence to support the claimant's argument that he should have received more points than he was awarded. The selection was not error free but we are satisfied that those errors would not have changed the outcome for the claimant and did not undermine the process as a whole.

58.7. The appeals manager reviewed a significant number of score sheets comprising those selected for redundancy in phase 2 together with those of employees identified by the claimant as similarly skilled but higher scored. The appeals manager concluded there were no

grounds to support unfairness in the selection process. We have also seen the scoresheets of the employees questioned by the claimant and we agree with the appeal manager's conclusion.

58.8. The claimant's argument was that he was unfairly selected for redundancy on the grounds of his religion. The respondent gave evidence that at that time it did not ask employees to declare their faith. The claimant argued that his name alone should have made it obvious he was Muslim. Applying his logic across the piece we noted two other employees where the same could be said. One was made redundant and one wasn't. In the circumstances we are satisfied there were no grounds on which we could conclude racial discrimination played any part in the redundancy selection.

59. We have found no evidence to suggest the claimant was unfairly selected for redundancy at all. Whilst the claimant argues he was the only Muslim left in his department and therefore the decision to make him redundant had to be discriminatory it does not stand up to scrutiny. MK made all the redundancy decisions at the Dunstable Depot and we heard no evidence that pointed to an inconsistency of approach.

60. We conclude the claimant has failed to discharge his burden of proof.

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.

_____

Employment Judge Allen

Date: 17 February 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
20 February 2023

FOR EMPLOYMENT TRIBUNALS