



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Gladwin

**Respondent:** Lucas Lee Ltd

**Heard in Leeds on:** 18 and 19 April 2023 **Reserved Decision made on** 26 April 2023

**Before:** Employment Judge Shulman

## Representation

**Claimant:** In person

**Respondent:** Mr F Jaffiar, representative

# RESERVED JUDGMENT

1. The claim of unfair dismissal is hereby dismissed.
2. Claims of breach of contract and unauthorised deduction of wages (2) are hereby dismissed upon withdrawal by the claimant.

# REASONS

## 1. Claims

1.1. Unfair dismissal.

1.2. Breach of contract.

1.3. Unauthorised deduction of wages:

1.3.1. £195.00;

1.3.2. Various receipts.

## 2. Issues

2.1. The issues in relation to unfair dismissal are set out at paragraph 30.2 of the Case Management Hearing dated 17 January 2023. None of the other issues which are set out in paragraph 30 are relevant any more.

## 3. The law

The Tribunal has to have regard to the following provisions of the law:

3.1. Those set out in section 98(1)(a) and (b), (2) and (4) of the Employment Rights Act 1996.

3.2. The fact that a redundancy situation exists does not automatically mean that a particular employee was dismissed by reason of redundancy. See, for example, **George v Ferrabryne Limited** ET case number 1400419/G, which, being a case of first instance, is not binding on this Tribunal. In that case the tribunal found that redundancy was not the real reason for dismissal. Mr George was seen as a problem employee because he had had an accident at work and was bringing a personal injury claim against the employer.

3.3. Employers defending unfair dismissal cases on the basis that the reason related to redundancy may plead in the alternative that the employee was fairly dismissed for some other substantial reason of a kind as to justify dismissal. see **Banks v St. Albans City and District Council** ET case number 3322720/16. Similarly, as a case of first instance this is not binding on the Tribunal. In that case the Council sought to remove a layer of management, due to a lack of strategic work at that level, creating two new posts at a lower grade. Mr Banks declined to apply for one of the lower grade roles and was dismissed. The Council pleaded redundancy and some other substantial reason in the alternative. The tribunal in that case held that a simple downgrading was not redundancy, but accepted that where there was a re-organisation to meet the Council's needs and that was some other substantial reason.

## 4. Facts

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

4.1. The claimant commenced employment with the respondent on 16 November 2016 as associate director/senior project manager and quantity surveyor.

4.2. The respondent is a Yorkshire based chartered surveying firm, providing services in the building and quantity surveying profession.

4.3. The claimant's employment was terminated on 5 January 2022. The respondent says that this was by way of redundancy. Whilst the claimant accepts that a redundancy situation existed, he says that redundancy was not the real reason for dismissal and that effectively the respondent undertook means to ensure that the claimant would no longer stay in the business over a period.

4.4. The claimant issued a claim for breach of contract on 30 May 2022, which related to being deprived of the use of a vehicle on 16 March 2020. He further issued a claim for unauthorised deduction of wages on 30 May 2022, which related to expense claims in August and September 2020. Both claims are substantially out of time and the claimant gave no evidence to show that it would not have been reasonably practicable for him to have issued those claims in time, so that

there were no grounds as far as the Tribunal is concerned for extending time. The Tribunal therefore invited the claimant to withdraw these claims during the hearing, which the claimant duly did and they were dismissed.

- 4.5. The claimant also made another claim for unauthorised deduction of wages in the sum of £195.00 relating to the cost of repairs to a vehicle. The Tribunal pointed out to the claimant that the respondent was perfectly entitled to make this deduction, as a result of which the claimant withdrew this claim during the hearing and it was dismissed. Accordingly the only claim that was left for the Tribunal to adjudicate upon was that of unfair dismissal.
- 4.6. On 16 July 2021 the claimant was notified that the respondent was proposing to restructure the quantity surveyor department of which the claimant was part, and therefore was affected, with a view to replacing the claimant's position with that of a chartered quantity surveyor trainee. The claimant was informed that his current position was at risk of redundancy. He was told that he would be given the opportunity to apply for the new post and was invited to a consultation meeting on 30 July 2021.
- 4.7. At the consultation meeting on 30 July 2021 Mr Christopher Lee, the managing director of the respondent, who gave evidence before us, explained the reasons for the proposals to the claimant and how the building team were to become chartered, including the claimant and his colleague called Walter. Walter was also in the consultation process. The claimant was offered both the trainee role and, as an alternative, a business development role. There would be an interview for the trainee role, a second consultation meeting and selection criteria and a third consultation meeting to discuss the outcome. The proposed roles carried considerably less income than the claimant's present role. (The proposed salary for both roles was £30,000.00 and the claimant's present salary was £70,000.00). The claimant was informed that if he succeeded in neither position or elected not to take either he would be redundant. The claimant accepts that he had nothing by way of consultation to offer the respondent at that time.
- 4.8. On 11 August 2021 until on or about 30 September 2021 the claimant was off work with a non-specific illness to begin with and then anxiety. His illness put him under pressure during the relevant part of the redundancy process.
- 4.9. By letter dated 12 August 2021 the claimant was asked to apply for the trainee post by 13 August 2021 if he was interested. The business development role would remain available.
- 4.10. By 30 August 2021 the process as regards the claimant had not moved on and so on 1 September 2021 the respondent wrote to the claimant to ask him to complete some questions and answers to assist in the scoring process by 3 September 2021.
- 4.11. In September 2021 the claimant was scored against a matrix and on or about 23 September 2021, at a second consultation meeting which was on Teams, the claimant was asked if he agreed with his score, to which he answered "No comment". The claimant accepts that he did not challenge his scores then but made it clear that he did not feel that the process was fair. The respondent asked the claimant to take the opportunity to talk about his score and the second consultation meeting was adjourned and in fact never resumed.

- 4.12. The claimant made representations on his score on or about 29 September 2021 that caused an increase in his score and the new score was explained to the claimant. At that time the claimant had not applied for either post and next day he was invited to a final consultation meeting on 4 October 2021.
- 4.13. At the final consultation meeting the claimant was informed that because of his score he had been unsuccessful and, therefore, he had not qualified for the trainee post. The position of business development executive was still open to the claimant, but was never resolved. The claimant told us that the jobs were not suitable because of the packages.
- 4.14. By letter dated 5 October 2021 the claimant's redundancy was confirmed and he was given the right to appeal. He was given notice of three months expiring on 5 January 2022. His appeal was heard in two parts on 15 October 2021 and then on 26 October 2021, but it was unsuccessful.
- 4.15. The claimant raised some matters in a letter (appeal letter) in support of his appeal and that letter was dated 26 October 2021. He also raised some matters in his witness statement, for the first time.
- 4.16. So far as the matters raised in the appeal letter are concerned:
  - 4.16.1. The claimant maintained that copies of a without prejudice letter dated 20 December 2019 from his solicitors to the respondent's advisors referring to a discussion about his dismissal or discipline were found on the printer and also on the claimant's desk. He said that the redundancy procedure was a sham, designed to remove the claimant from the business and that this incident was an example. The respondent says that this was raised for the first time after the dismissal and would have made no difference to the respondent's decision.
  - 4.16.2. The claimant alleges that depriving him of the use of a car was evidence to push the claimant out of the business. The respondent says the car issue was not relevant to the redundancy process.
  - 4.16.3. The provision for use of a lesser vehicle the claimant says was a method to push the claimant out of the business. The respondent says the claimant did not like the car which he was offered. The main issue in dealing with the car in this way the respondent says was to bring the business back to profitability.
  - 4.16.4. The claimant was disciplined for working whilst on furlough and says that this was another method designed to force him out of the business. The respondent denied that it wanted the claimant to go on the basis that the claimant had been disciplined.
  - 4.16.5. (a) The claimant maintained that the trainee and business development roles would never appeal to the claimant because of the packages and that this was a way to exit the claimant from the business (as were paragraphs 4.16.5(b) and 4.16.5(c) below). The respondent accepts that both positions carried lesser salaries than the claimant was earning.
  - 4.16.6. (b) The claimant maintained the interview questions for the trainee job were drafted in an antagonising way. The respondent maintains that the questions were standard, pertinent and the same for others.
  - 4.16.7. (c) The claimant maintains that in the process short deadlines were imposed for interviews, meetings and correspondence whilst the claimant

was sick. On the other hand the claimant accepted that the redundancy process could not go on forever. The respondent says the claimant was given flexibility having regard to his sickness.

4.17. In relation to the matters raised by the claimant in his witness statement for the first time:

4.17.1. In the early stages of 2020 Mr Lee's attitude was changing and the conducting of the claimant's appraisal was designed to build a level of documentation to support the management of the claimant out of the business. This was on or about 14 January 2020. The claimant did not put this assertion in the appeal letter nor in any other evidence prior to his witness statement, which the claimant described as an oversight on his part.

4.17.2. The claimant says that he was singled out to take a forced holiday. This the claimant says was an attempt to single him out and upset him and designed to manage him out of the business. The claimant says that it was an oversight that he had not put this in the appeal letter.

4.17.3. The respondent alleges that the claimant refused to sign a register relating to health and safety guidance. The claimant says this is not true. The claimant says that this was an example of trying to get the claimant out of the business. The claimant accepts that it was an oversight that he did not put this issue into the appeal letter.

4.17.4. The claimant says slowness by the respondent to deal with the redundancy process was ultimately aimed at "constructively" dismissing him. Again the claimant did not mention this in the appeal letter or anywhere else.

4.17.5. The respondent expected the claimant to bring work into the business. The claimant says this was another example of managing the claimant out of the business. The claimant says it was an oversight that he did not put this in the appeal letter.

4.17.6. The claimant was criticised for his efforts to bring in business. The claimant says this was a further action to manage him out of the business. Again the claimant did not mention this in the appeal letter.

4.17.7. The claimant says that in offering the claimant a reduced package for the redundancy process (and not part of it) was designed to get the claimant out of the business. Again it was the claimant says an oversight but he did not put this in the appeal letter.

**5. Determination of the Issues (After listening to the factual and legal submissions made by and on behalf of the respective parties):**

5.1. The claims for breach of contract and unauthorised deductions from wages (2) are hereby dismissed upon withdrawal by the claimant.

5.2. As to the reason for the dismissal there is no doubt that at or about July 2020 the evidence shows that the respondent's business was in difficulties. The needs of the business for an employee of a particular kind, that is the kind carried out by the claimant (and Walter) had ceased. Indeed the claimant himself accepted that he was redundant. However the claimant cites a number of reasons why he believed he was being managed out of the business as set out in paragraphs 4.16 and 4.17. Accordingly the claimant says the real

reason for dismissal was something other than redundancy, namely, that the redundancy process was a sham and that there were a number of instances where the respondent tried to get the claimant out. Some of these instances appear for the first time as part of the appeal process and some never appeared at all until they found their way into the claimant's witness statement.

- 5.3. There are a number of reasons why the Tribunal does not accept that these instances displace the question of whether there is a redundancy. In particular none of them found their way into the three consultation meetings. Further on close examination none of them stand up as a "set up" to get rid of the claimant. Further several instances never appeared in the appeal letter or indeed at any stage of the process before the claimant's witness statement which the claimant identifies as oversight.
- 5.4. If these issues were so important why did the claimant not raise them earlier than the last day of the appeal? And some not at all in the process? Instances in the appeal letter were dealt with in evidence by the respondent and the Tribunal prefers that evidence to the evidence of the claimant. Therefore the Tribunal finds that the reason for dismissal was redundancy.
- 5.5. The Tribunal finds that the claimant was adequately warned about the process. The claimant was given two weeks' notice and he was certainly consulted. The evidence shows that the claimant did not take full advantage of the consultation process. It is true that he had a period of sickness but on the other hand the respondent's business was in difficulty and had to proceed with the process as soon as it reasonably could.
- 5.6. So far as the selection decision was concerned there were only two candidates in the pool who were affected and they were in a pool of two. The evidence shows that the claimant did not help himself, for whatever reason, in completing the questions for the matrix but he finally accepted his score. As a result of his score he was not selected.
- 5.7. The respondent did take steps to try and find the claimant alternative employment. Two jobs were on offer. However they were not suitable offers of alternative employment, there being such a difference in salary. The Tribunal nevertheless does not find that this is fatal to the position of the respondent. This was all the respondent could do and the evidence showed, understandably, that the claimant did not immerse himself in the alternative employment process.
- 5.8. There is no doubt that the claimant's dismissal was the only course open to the respondent. The claimant had less satisfactory scores than Walter, his job had gone, and understandably he refused both the alternative jobs. The respondent could not do anything else than dismiss the respondent in the circumstances.
- 5.9. It follows that this is not a case of some other substantial reason of a kind as to justify dismissal. For all the reasons given above section 98(4) of the Employment Rights Act 1996 has been satisfied again for all the reasons given above.
- 5.10. Whilst this is not part of my decision I would comment on the bundle. It was nearly a 1000 pages long and not in chronological order. It was held together by treasury tags and not with a ring binder. The Tribunal has a job to do and a serious job. The manner in which the bundle has been delivered has caused

the Tribunal extra time and difficulty, bearing in mind that this type of case often amounts to what is often a relatively straightforward unfair dismissal case. The Tribunal is sure that lessons can be learnt by the parties in assembling bundles for judges, members, witnesses and indeed the parties themselves.

Employment Judge Shulman

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Date: 9<sup>th</sup> May 2023

RESERVED JUDGMENT & REASONS SENT TO  
THE PARTIES ON

Date: 18<sup>th</sup> May 2023

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