



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Linge**

**v**

**BBC Studios Productions Ltd**

**Heard at:** Watford

**On:** 3 & 4 April 2023

**Before:** Employment Judge French

**Appearances:**

**For the Claimant:** Mr Reddy, Free Representation Unit

**For the Respondent:** Mr Kelly, Counsel

**JUDGMENT** having been sent to the parties on 12 May 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

1. This is a claim presented by the claimant on 23 June 2022 for unfair dismissal relating to his voluntary redundancy.
2. In a response presented 4 August 2022 the respondents deny that there was any dismissal. If there was a dismissal, they state that the claimant was dismissed for some other substantial reason, that being his mutual agreement. In the final alternative, if the claimant was dismissed it was by reason of redundancy and that dismissal was a fair one.

### Evidence

3. I had a main bundle consisting of 267 pages and a witness statement bundle consisting of 47 pages. I've heard from Mr Linge himself, Ms Julia Crampsie and Miss Shimeld-Fenn for the claimant.
4. For the respondent I've heard from Todd Goodyear and Deborah Sathe. I have had skeleton arguments from both parties and had regard to the authorities that have been brought to my attention by both parties.

### Preliminary issues

5. There was a preliminary issue at the outset that being that the witness statement of the claimant and one of the witnesses appeared to raise that there was misleading information given in relation to the Holby City production and the respondent sought a declaration that the claimant should not be allowed to rely upon that since it was not pleaded in his ET1 and effectively sought to postpone the case if the claimant was granted permission. When I heard representations in relation to that issue the claimant clarified that the reference was simply emotive language and that his position in terms of his claim was as per the ET1. The respondent conceded that they had prepared the claim on that basis. As such I made no determination on the issue and the case proceeded on that basis.

### **Issues**

6. There had not been a case management hearing in relation to this matter and at the outset I therefore agreed that the issues to be determined by the tribunal were those as outlined in paragraph 3 of the respondent's skeleton argument.

### **Fact finding**

7. The claimant was employed by the respondent as a casting associate from 10 February 2014 to 20 March 2022, having been promoted to the role of associate throughout that employment. He was a member of the casting department which casts actors for productions for the BBC. Those productions include continuing drama series such as the programme Eastenders which the claimant worked on. These are shows that are produced continuously, namely on a week-to-week basis, throughout the year.
8. There are also productions which were referred to as coming from the Birmingham hub. These are one-off productions with 10 to 15 episodes and are not filmed all year. However, some of those one-off productions have a long-running history with several series being produced, returning on a regular basis. In particular, two of those programmes I understand to be Father Brown and Sister Boniface.
9. Within the casting department there are junior staff being assistants, there are associates which the claimant was and then there are directors. I am assisted by the organisation chart at page 249 prepared by Mr Goodyear which shows the position as of June 2021 and which the claimant accepted was correct as of that date. In terms of that chart the claimant was the associate assigned to Eastenders but would also work on the non-CDS shows when required. There is then two casting directors and an assistant assigned to Casualty, Doctors and Holby City respectively.
10. Miss Sathe's evidence at paragraph 13 of her witness statement which was unchallenged is that each show that the relevant team member of the casting department is attached to funds their salary, therefore, Eastenders funded the claimant's salary as he was attached to that show and Holby City funded the two directors and the one associate attached to that show.

11. In June 2021 it was announced that one of the CDS was not continuing. Two directors and one assistant attached to the Holby City production were, therefore, placed at risk of redundancy as a result as well as all other employees not in the casting department but who worked on Holby City.
12. The respondent's evidence by way of Ms Sathe is that a number of options were looked at to retain the three employees attached to the Holby City production. These are outlined at page 115 of the bundle and were not considered viable, therefore, the three members of the casting department attached to Holby City were notified on 20 September that they were at risk of redundancy and a consultation process in relation to those three employees began. On the same day a meeting was held with the entire casting department together with Todd Goodyear, Julia Crampsie and Ms Sathe. This was held to explain the risk of redundancies to the three Holby City individuals, to the wider team, it being recognised that they had worked together for a number of years and that there would clearly be an emotional impact on them as a result.
13. The claimant accepts that he was not himself placed at risk of redundancy, that is confirmed in his ET1, and I have not heard any other proposition throughout these proceedings.
14. I understand that as part of the announcement at page 115 to 116 of the bundle the panel at the meeting tried to cover questions which may be considered by the team, and this included reference to the consideration of voluntary redundancies and to speak to HR directly if that is something that they wish to be considered for.
15. I also understand from the evidence presented to me that during that meeting a number of individuals did raise the question in relation to voluntary redundancies and were again told to speak individually to HR. The claimant's assertion is that at this meeting and throughout his remaining time at the company that he was given inaccurate information regarding the viability of the department.
16. There was a focus through cross-examination in relation to the fact that Father Brown and Sister Boniface did indeed return, and I was taken to an announcement at page 185 that Sister Boniface in February 2022 was going to be re-commissioned and as such it was inaccurate for the claimant to have been told that it would not be ongoing and that his work would no longer be on such programmes.
17. I accept the evidence of Ms Sathe on this point, that at the time that the decision in relation to redundancies was made, there was no confirmed plans to bring those shows back. Her evidence was clear that such discussions took a long time and at the time the decision to make redundancies were made, those decisions had not been confirmed. I also accept her account that, in any event even had those shows be returning, it would not in itself have been enough to retain the three full time employees who had been attached to Holby City. This was also confirmed by Mr Goodyear in his evidence, it is supported further by the document at page 260 which outlines that there would be a £198,000 deficit as a result of the loss of funding from Holby City and also the information that was given in the email at page 126

that 80% of the funding for the department comes from CDS.

18. The claimant's evidence was also that the job adverts at page 163 for two casting assistants supports the fact that he was given inaccurate information because there was clearly still a need for work. In that regard, I note that both adverts are for fixed term roles, one of 6 months and one of 12 months. When comparing that to the organisation chart at 251, I accept that one of those roles was for maternity leave cover, that being in relation to the casting assistant who was on maternity leave and who would ordinarily be attached to the Casualty programme. The other was a fixed term role that I understand was to fill-in for the fact that the casting executive was on sickness leave.
19. Both Mr Goodyear's evidence and Ms Sathe's evidence was that there was a need for those individuals, but it was on a temporary basis, there was not an opportunity for someone on a full-time basis and I accept that. The advert is not for a full-time position, they are clearly fixed term and I accept the explanation that has been given by the respondent's witnesses in relation to their temporary need.
20. In any event, it was never suggested that there was no need for the work that the claimant performed, he was attached to Eastenders, that was a CDS and had he stayed he would have continued to work on that.
21. Following the meeting on 20 September, on 23 September the claimant wrote to Mr Goodyear about voluntary redundancy.
22. A meeting took place the next day, 24 September and the claimant's reasons in relation to considering voluntary redundancy are outlined in his witness statement paragraph 25 but to summarise he gives three reasons, namely information which the BBC had given that he would no longer be working on the breadth of programmes as before, toxic behaviour from senior leadership and his father's ill health.
23. The claimant says that all of those issues were discussed with Mr Goodyear at the meeting. Mr Goodyear denies this and says that he understood the reason that the claimant wanted to leave was his father's ill health.
24. In resolving that, I am assisted by the email at pages 133 and 134 of the bundle that was sent by the claimant on 18 October following a second meeting with Mr Goodyear on 15 October. It outlines what was discussed at the meeting and there is reference only to difficult personal circumstances. The last line does express reservations about the future of the team, but says given his caring responsibilities, he wishes to put matters behind him. That is further supported by an email sent from his solicitor to Mr Goodyear at page 142 that says he has advised the claimant in relation to issues with the process, but that the claimant wants to leave amicably in order to focus on his caring responsibilities. That was highlighted further in an answer in cross-examination regarding that email, where he replied that there was nothing more important than family and that is where his head was at.
25. Based on that evidence, I find that the motivation behind the voluntary redundancy was his father's ill-health and his caring responsibilities and that alone. I, for the reasons I have already given, do not find that inaccurate

information was given.

### **The Law**

26. Section 94 of the Employment Rights Act 1996 (ERA) confers on employees the right not to be unfairly dismissed and enforcement of this right is by of complaint to the tribunal. Under section 111, the employee must show that he was dismissed by the respondent under section 95.

27. Section 95 ERA relevantly reads as follows:

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

- a) the contract under which he is employed is terminated by the employer  
(whether with or without notice),
- b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or
- c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct

28. Section 139(1) of the ERA defines redundancy for the purposes of the statute and reads as follows:

(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 to—

- (a) the fact that his employer has ceased or intends to cease—
  - (i) to 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

29. Section 98 of the act deals with fairness of proceedings, there are two stages within that, the first is that the employer must show it had a potentially fair reason for the dismissal if there is one and second, if the respondent shows that it has a potentially fair reason the tribunal must consider whether the respondent acted fairly or unfairly in dismissing for that reason.

30. Section 98(4) deals with fairness generally and provides that the determination of it will have regard to the circumstances including the size and administrative resources of the employer.

31. In redundancy cases where an employee has bumped another employee, whether or not the termination of the first employee will amount to a redundancy dismissal, will turn on whether there has been a dismissal and if so, whether a redundancy situation was causative of that dismissal.
32. It is a question of fact in each case who has terminated the employment: Birch v University of Liverpool [1985] ICR 470, at 478B. Where an employee offers to retire and that offer is accepted by the employer, then that is not a dismissal by the employer: Birch, at 479B and 484B-C. Where there is a redundancy situation as there is an overall reduction in the requirement certain kinds of work, then a consensual resignation in that redundancy situation may still amount to a dismissal: Birch, at 481F-482E.
33. If there has been a dismissal, then the Tribunal has to ask (i) was there a redundancy situation, and (ii) did that redundancy situation cause the claimant's dismissal. This two-stage approach – (i) identifying the redundancy situation described at section 139 ERA, and (ii) asking if that situation was causative of the claimant's dismissal which has been approved in Safeway Stores plc v Burrell [1997] ICR 523, at 529D and the House of Lords in Murray v Foyle Meats Ltd [2000] 1 AC 51, per Lord Irvine of Lairg LC, at 56F-G.

### **Conclusions**

34. In answering the first question of whether or not there was a dismissal, the claimant's evidence is that he took voluntary redundancy as a result of the three factors outlined in his witness statement.
35. The claimant's assertion is that the mere fact it was a voluntary redundancy means that based on the case law it is not a termination by mutual agreement. His representative took me to quote in Harvey on *Industrial Relations and Employment Law* namely "volunteers for redundancy do not agree to terminate their contracts: rather they agree to be dismissed for redundancy."
36. The respondents state that this situation was a mutual agreement between the parties effectively labelled by the term "voluntary redundancy" with a payment being made as part of that mutual agreement. Whether there was a mutual termination is a question of fact and the respondent takes me to Birch that can be analysed by way of offer and subsequent acceptance of that offer.
37. I am not persuaded by the claimant's position that the mere fact that this is a voluntary redundancy automatically means that there is a dismissal; it has to be looked at on the individual facts. Here the claimant was not at risk of redundancy, he was not placed into a redundancy pool or given any notice that he was at risk of redundancy.
38. A meeting was held on 20 September to explain redundancies in the rest of the team. I find that the respondent did not invite voluntary redundancies at that stage, albeit it was foreseen as a potential question and included on the crib sheet announcement at page 115.

39. The claimant's own evidence was that the respondent did not necessarily openly invite voluntary redundancies but rather he stated that at no point did they shut the possibility down. The respondent was open to voluntary redundancies and indeed the respondent does not dispute that. Ms Sathe was candid on that point that it was an awful situation facing the loss of equally valued members of staff. The whole team were valued and if someone was willing to go voluntarily instead of someone else, she saw that as the better option.
40. Mr Goodyear's evidence was also similar, all of the team were valued and any loss would be a loss but would mean the retention of another equally valued person.
41. As a result of the meeting on 20 September, the claimant's own evidence was that he approached Mr Goodyear on 23 September to discuss his options. There then followed email correspondence as outlined in the bundle, as to the amount he would get and effectively what his package would look like were he to leave. As part of that correspondence, Mr Goodyear also indicated that he would need to ensure that any offer could be agreed.
42. Page 146 confirms the respondent's position that they are able to agree the claimant's request. I find that this supports the fact that it was an offer from the claimant, which the respondent accepted.
43. The claimant has suggested that he felt pressure by Mr Goodyear. That is not supported by the evidence before me. There is over a month of correspondence between the parties. The claimant was also legally represented for which in correspondence she confirms that he has been fully advised.
44. I have already found, for the reasons I have given, that the claimant's motivation was his father's ill health.
45. I accept that there can be a dismissal by an employer in a case where voluntary redundancy is taken, and also in the bumped redundancy situation, as outlined in *Burrell*. That is also outlined in *Optare*, where the employee requested voluntary redundancy as part of a redundancy process, so as to result in his dismissal being one as a result of redundancy.
46. I consider that the particular facts before me are a different situation. The claimant was never in a pool of redundancies, he was not at risk, there was no reduction in his work, and he would have continued in his role.
47. The cases to which I have been referred all relate to individuals who have been in a pool of people at risk and have taken voluntary redundancy as a result. This is different, due to personal reasons, the claimant approached the respondent and made an offer to terminate his employment. Page 133, being the email from the claimant to Mr Goodyear, states that even if that does not bump someone else, he wishes to proceed with that arrangement and that demonstrates that his motivation was his personal circumstances and not a redundancy situation.
48. For those reasons, I therefore find that there was a mutual agreement to

terminate the employment, and that there was no dismissal. The claim fails for that reason and is dismissed.

49. If I am wrong, and there was a dismissal, the thing that caused the dismissal, was his request for voluntary redundancy which I consider would amount to some other substantial reason. I do not consider that this was a redundancy situation.
50. In that regard, I look at the *Safeway* test. I have regard to the link between the employee and the particular work and here there was no reduction in need for the particular work that the claimant did. He worked on *Eastenders*, and that would have continued if he stayed and that was not disputed. The non-CDS work was irrelevant to the risk of redundancy; *Eastenders* was filmed on a weekly basis and the fact that other ad-hoc programmes were not re-commissioned was therefore irrelevant. That, in itself, did not create a redundancy situation for the claimant.
51. I find that any dismissal was not caused by a reduction in work. The claimant approached Mr Goodyear with a request for voluntary redundancy; that is the reason that caused the dismissal and I have already addressed his motivation in that regard, which was supported by his own evidence and the contemporaneous documents within the bundle.
52. The *Optare* case where redundancy was found in a voluntary redundancy situation was where redundancy was caused because the employer brought the voluntary redundancies into process which can be distinguished from this case. In *Safeway* where the bumping situation caused dismissal by redundancy, that person was again part of the pool which can be distinguished to these particular facts.
53. The claimant was not at-risk and it was his own actions that resulted in dismissal. In that situation I find that there was a reasonable process; it was a voluntary request, it was discussed over a period of one month, he had legal representation for which they outlined to Mr Goodyear that the claimant has been fully advised in relation to matters and potential flaws in the process and that he wished to proceed.
54. I do not find that there was any inaccurate information provided as a result of the reasons I have already given and so in light of that, there was a fair process and any dismissal was for some other substantial reason.

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Employment Judge French  
Date: 12 June 2023  
Judgment sent to the parties on  
12 June 2023  
GDJ  
For the Tribunal office