



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Dabrowska  
**Respondent:** V-Tech Ltd  
**Heard at:** East London Hearing Centre (via CVP)  
**On:** 11 May 2023  
**Before:** Employment Judge Whittall

**Representation**  
**Claimant:** Litigant in person  
**Respondent:** Ms J Linford (Counsel)

## RESERVED JUDGMENT

The claim of unfair dismissal is dismissed

## REASONS

1. The Claimant presented an ET1 on 19 January 2023 claiming she was unfairly dismissed by the Respondent.
2. The Claimant was employed by the Respondent from February 2008. She undertook a variety of roles during her employment and her final role was as operations manager. In this role her responsibilities included HR tasks, database updates, assisting and overseeing a service team, preparation for and participation in exhibitions and trade fairs, database management and general administrative and office management tasks.
3. The Respondent is a company operating in the automotive market, supplying and manufacturing garage equipment for customers based in the UK and around the world. The Respondent is a small business with between five and nine employees. It is part of a wider group of companies managed by the same managing director.

The issues in the case

4. The Claimant's case was that she disagreed with the reasons for redundancy and does not consider there was a genuine need for redundancy. She had not been provided with documentary evidence of the need for redundancy. When she asked for further explanation she did not receive a satisfactory or true answer. She considers her tasks were distributed to other team members rather than there being a downturn in business. She had not had the selection criteria explained to her. In summary, the Claimant challenges that the reason, or principal reason, for her dismissal was redundancy.
5. The Respondent's position is that the only reason for dismissal was redundancy, that this was a reasonable decision and a fair process was followed.

### The Hearing

6. The hearing took place by CVP. All of the parties and witnesses managed to access the video platform without any difficulties.
7. The parties had agreed and provided me with a bundle of 279 pages of documents.
8. During of the hearing I heard from:
  - a) Mr Viresh Chandarana, Managing Director of V-Tech Ltd and he gave evidence in relation to the reason for dismissal and the redundancy process; and
  - b) Mr Chris Coyle, Head of Operations for V Tech Ltd who gave evidence about the changes to the business that lead to the redundancy situation and the appeal process; and
  - c) the Claimant herself who gave evidence on her own behalf.
9. At the conclusion of hearing evidence, each party made oral submissions. I asked the Respondent's representative to go first to give some guidance to the Claimant and she agreed to do so. I will not repeat those submissions here but I am going to deal with the main points in my discussions and conclusions below.

### Findings of fact

10. When setting out my findings of fact, I will not set out the entirety of the evidence that I heard but will highlight the parts of the evidence necessary for me to make a decision and which seemed the most important.

### *Impact of Covid pandemic on the business - background*

11. Mr Chandarana gave evidence that the challenges he faced during the Covid pandemic forced him to reflect on how he should run his businesses. He described being a traditionally run family business that needed to do things differently. Firstly, he recognised that, as managing director of several small family businesses, he was doing far too much himself. Mr Chandarana was candid about the impact on him personally and stated that if felt like he was being pushed from pillar to post. He identified a personal need for an executive assistant dedicated to supporting him running his businesses.

12. Mr Chandarana also gave evidence about the challenges the businesses faced during this time, including the uncertainty created by COVID and currency fluctuations. He reflected long and hard on what he felt the business needed to survive and grow. He decided that specific roles designed to generate income and increase profitability needed to be recruited into the business. To this end, new sales assistants were recruited and the specific role of head of operations was created, to which I will return to below.
13. I accept Mr Chandarana's evidence set out in the above two paragraphs as credible and reliable. The situation he described is consistent with the actions he subsequently took in recruiting and changing the way his business was run. It is credible that the covid pandemic had this impact on his business. I find that the situation described by Mr Chandarana was the background to the subsequent events leading to the Claimant's dismissal.

*The Claimant - furlough*

14. For significant periods during the pandemic, the Claimant was furloughed. She was initially furloughed from March 2020 until September 2020. She had a second period on furlough from December 2020 until May 2021. Other employees were also furloughed.

*Recruitment of an executive assistant*

15. In September 2020, Ms Vignon had been hired as an executive assistant to Mr Chandarana. The Claimant had not been informed about this recruitment and so had not been given an opportunity to apply for the role and, by implication, had not been considered for the role.
16. On returning to work in September 2020, the Claimant was informed that Michelle Vignon had been hired as an executive assistant to Mr Chandarana. The Claimant was immediately concerned that Ms Vignon's appointment put her role at risk. She described Ms Vignon as being actively involved in her daily tasks. The Claimant was expected to help and train Ms Vignon. On 15 September 2020, she emailed Mr Chandarana expressing her concerns. The Claimant expressly stated that she felt more and more tasks have been taken away from her. Mr Chandarana responded the same day stating that he disagreed that tasks had been taken away from her but they have automated a lot of service tasks and distributed certain tasks to more relevant team members and departments to make things flow better. He stated his expectations were that, as a senior team member he expected her to engage and assist team members and be fully onboard with the changes.
17. Mr Chandarana gave evidence for the reasons for the need for an executive assistant which was predominantly to support him in running his businesses. The job description for the executive assistant role reflects that stating that the role includes supporting the managing director in all aspects of the business, including diary management and administrative support for the managing director and organising and supporting team members. He explained that Ms Vignon was experienced as an executive assistant and so was recruited with a salary to reflect that experience.

18. Mr Chandarana also gave evidence that when he recruited the executive assistant who started in September 2020, he was not envisioning that the role of operations manager would be made redundant at that time. He explained that between the recruitment of Ms Vignon in 2020 and the Claimant's redundancy in 2022, the company and the world had changed a lot. He described how in this time there was a significant number of people departing the business. Eighteen people departed for various reasons.
19. I find Mr Chandarana's evidence on this point credible and reliable and accept that, when recruiting the executive assistant it was not with the view to replacing the Claimant nor was he considering redundancy for the role of operations manager at that time. The period of time between the recruitment of the executive assistant and subsequent dismissal of the Claimant supports Mr Chandarana's account as it is a significant period of time between the two events. On the Claimant's return the emails evidence attempts by Mr Chandarana to ensure the Claimant has sufficient work.
20. I also do not accept that Ms Vigon effectively took over the Claimant's role. Whilst the job description for the Claimant was out of date, the job description for the role of executive assistant is different to that of an operations manager and the description of the role the Claimant herself provided.

*The Claimant's employment experiences on return from furlough*

21. The Claimant gave evidence that on returning on both occasions from she never resumed her pre-furlough administrative and HR duties. She described feeling very sidelined and excluded with the atmosphere in the office seeming very hostile. This is clear from some of the email exchanges within the bundle of evidence, the details of which I do not need to go into for the purposes of deciding this claim.
22. I accept that, on returning from furlough on both occasions, the Claimant did not resume her duties from pre-March 2020. This is supported by the emails disclosed which evidenced the Claimant both setting out what work she was doing and raising this as a concern. The Claimant undoubtedly felt sidelined and excluded in these circumstances. I accept that she felt the atmosphere was hostile. She clearly felt betrayed given her loyalty to the Respondent. In accepting this I do not accept that it was the intention of Mr Chandarana to create a hostile environment. The emails do not evidence hostility and Mr Chandarana gave no indication of hostile feelings towards the Claimant in evidence.

*Recruitment of Head of Operations – further automation*

23. Following Mr Chandarana's decision to make changes to the way his businesses were run, after what Mr Chandarana described as a lengthy courting period, Mr Coyle was recruited as Head of Operations in September 2021. Mr Coyle gave detailed evidence about what he described as his specialism, namely automating certain processes within the businesses to make them more efficient and ultimately profitable. He was tasked with this and gave numerous examples of the ways in which he fulfilled the automation agenda.

24. The Claimant was invited to a meeting on 1 October 2021 and informed that she would be working closely Mr Coyle. One project the Claimant was due to work with Mr Coyle on was for the company to obtain a particular accreditation, the 'Safe Contractor' accreditation. However, a decision was made to engage with an external contractor who specialised in this accreditation process and so the Claimant no longer needed to work on this task. The Claimant had no knowledge of whether an external contractor had been recruited. I have no reason to doubt the Respondent's evidence on this point and so I accept that this project was outsourced to an external contractor. Consequently, the Claimant no longer needed to work on this project.
25. Mr Coyle described how the business had previously operated by manual entry of data into three to four different databases which then required people to enter the data into a number of different databases and then monitor for things like whether a customer's request for a quote had been followed up. Mr Coyle introduced a web-based programme meaning this could be done automatically. Through the programme introduced the programme would identify if, for example, a request for a quote had not been responded to.
26. I accept the detailed evidence of Mr Coyle into the processes he introduced. He was specifically recruited due to his experiences in automation and was able to give a detailed account of the work he was doing. In accepting his evidence on this point, I note that the Claimant simply denied that this had happened and considered all of her work had simply been taken away from her. The Claimant would not have had insight into all of the changes that were ongoing in the business. I also note that, on the Claimant's own account, she was struggling to find enough work to do to fill her working week.
27. However, I accept that not all of the Claimant's tasks had been automated. Mr Chandarana stated in his written evidence that work was not taken off the Claimant but that there was a restructuring with certain tasks being taken over other people for efficiency reasons. Whatever the label, the evidence was that certain tasks were redistributed to other members of staff. For example, Ms Vignon took over the Claimant's responsibility for HR whilst she was on furlough and this continued on the Claimant's return.

#### *Redundancy process*

28. On 13 January 2022 the Claimant attended a review meeting with Mr Chandarana and Ms Vigon. The fact that the Claimant was struggling to find work was discussed and the situation where the Claimant didn't have a specific role or responsibilities was discussed as unsustainable. Mr Chandarana considered that the Claimant had carried out her tasks well but he was concerned moving forward. The fact the Claimant's job was at risk was mentioned. The Claimant gave evidence that this felt like a very hostile meeting. Mr Chandarana said he was trying to be clear with the Claimant. It is clear that communication in this meeting was not ideal, mentioning that her role was at risk is not an appropriate way to raise such a serious matter. I accept the Claimant's perception that this was a hostile meeting but do not accept that this was Mr Chandarana's intention. I accept that Mr Chandarana was trying to be clear with the Claimant. In evidence he described trying to be fair to her given the length of time she had worked for him.

29. Following this meeting, the Claimant had a number of weeks off on sick leave. On her return to work, on 19 April 2022 the Claimant was notified that her role of operations manager was at risk of redundancy and a consultation period commenced. The Claimant was invited to propose alternative solutions. The Claimant was informed in a letter that this was due to the work of the operations manager slowly ceased either because of new technology or because there is no longer the requirement for the work to be completed.
30. Following the consultation period, the Claimant had a meeting with the Respondent and her union representative was present. On 6 May 2022 she was informed that her role had been selected for redundancy. She was paid her notice period and statutory redundancy pay. An appeal process was allowed and the Claimant had two appeal meetings with Mr Coyle, with her union representative present. Mr Coyle upheld the decision to make the Claimant's role redundant.
31. Mr Coyle confirmed in evidence that he would have overturned the decision had the appeal lead him to conclude redundancy was not appropriate. Whilst Mr Coyle was an employee of Mr Chandarana, he had been recruited into a senior role due to his high level of experience and Mr Chandarana clearly understood and respected Mr Coyle's experience. I accept that, Mr Coyle did not feel bound by the earlier decision when conducting the appeal.
32. Mr Chandarana had engaged an external consultant to advice on the redundancy process.

#### The relevant law

##### *Relevant statutory provisions*

33. The right not to be unfairly dismissed is provided for by section 94 Employment Rights Act 1996 ("ERA").
34. The right not to be unfairly dismissed is only available to those who have been continuously employed for at least two years or those dismissed for what are referred to as automatically unfair reasons.
35. The test to be applied in determining the Claimant's claim of unfair dismissal for a redundancy dismissal is set out in section 98 ERA:
  - (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 subsection if it— ...*
  - (c) *is that the employee was redundant ...*

36. This is the first part of the test and the burden of proof is on the Respondent to show the reason for the dismissal was redundancy. If the Respondent establishes that the reason for dismissal for redundancy, the second part of the test is to consider the reasonableness of the decision. The test is neutral, meaning that the burden to establish this is not on the Claimant or Respondent, but is for the Tribunal to determine.
37. In doing so, the applicable test is set out section 98 ERA, as follows:
- (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. [emphasis added]*
38. There is a statutory definition of redundancy. This needs to be met for the dismissal to be for the reason of redundancy. If the definition is not met, it is not redundancy and, unless there is some other substantial reason for the dismissal, the dismissal will be unfair.
39. The definition of redundancy is in section 139 ERA, the material parts of that section read as follows:
- 139 Redundancy.*
- (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—*
- (b) the fact that the requirements of that business—*
- (i) for employees to carry out work of a particular kind, ...*
- have ceased or diminished or are expected to cease or diminish.*
- (6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.*

*Relevant case law*

40. In relation to the first stage of the test, namely what was the reason, or principal reason, for the dismissal, **Safeway Stores plc v Burrell [1997] IRLR 200** suggested that there are three questions: First, has the employee been dismissed? Secondly, if so, has the requirement of the employer's business for employees to carry out work of a particular kind ceased or diminished? And thirdly, if so, was the dismissal of the employee caused wholly or mainly by that state of affairs?

41. It is not the tribunal's role to investigate whether an employer's decision that redundancies are necessary, was sensible see- **James W Cook & Co (Wivenhoe) Ltd v Tipper** [1990] IRLR 386.
42. However, a tribunal can from investigate whether the employer held a genuine belief in the facts relied upon to conclude that employees needed to be made redundant. In forming that belief, the employer must act on reasonable information reasonably acquired - **Orr v Vaughan** [1981] IRLR 63.
43. The existence of facts that might support a genuine need to make redundancies does not by itself demonstrate that an employee dismissed in those circumstances was dismissed for the reason, or principal reason, of redundancy. Whether that is the case is a question of fact and causation for the tribunal see **Manchester College of Arts and Technology (MANCAT) v Mr G Smith** [2007] UKEAT 0460/06
44. Reorganisations of businesses may result in dismissals for the reason of redundancy if the statutory definition of redundancy is met. If not, reorganisation resulting in dismissal may be a dismissal for SOSR, see for example **Banks v St Albans City and District Council ET Case No.3322720/16**. The key issue is whether the statutory definition of redundancy is met.
45. If the employer is unable to show that a dismissal was for a potentially fair reason, then the dismissal will always be unfair. If the Respondent discharges burden is discharged, as set out above, the tribunal must go on and apply the test of fairness set out in sub-section 98(4) ERA set out above.
46. In applying section 98(4) ERA, the correct test is whether the employer acted reasonably, not whether the tribunal would have come to the same decision itself. In many cases there will be a 'range of reasonable responses', so that, provided that the employer acted as a reasonable employer could have acted, the dismissal will be fair: **Iceland Frozen Foods Ltd v Jones** [1982] IRLR 439. That test recognises that two employers faced with the same circumstances may arrive at different decisions, but both of those decisions might be reasonable.
47. The Employment Appeal Tribunal in **Williams v Compair Maxam Ltd** [1982] IRLR 83 again stressed that in determining the question of reasonableness, it is not for the tribunal to impose its own standards. However, it gave general guidance to the factors to be considered when assessing the fairness of a dismissal by reason of redundancy, as follows:
  - a) Whether employees were provided with sufficient warning of the potential redundancies to enable them to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment;
  - b) Whether there was sufficient consultation, with the union if there is one involved;
  - c) Whether the selection criteria was agreed with the union, if involved, does not depended on the opinion of the person making the selection and can be objectively applied and evidenced;



- d) The selection is made fairly in accordance with the criteria and will consider any representations;
- e) Whether any alternative work was available.
48. In relation to the latter point, an employer should take such steps as are reasonable to secure alternative employment for an employee displaced because of redundancy. As a general rule it would be reasonable to provide the employee with such information about the terms and conditions applicable including the financial prospects see **Fisher v Hoopoe Finance Ltd EAT0043/05**.
49. In **Wrexham Golf Co Ltd v Ingham EAT 0109/12** the EAT noted that having a pool of employees for selection is not a requirement of s98(4) ERA and so 'there is no rule that there must be a pool: an employer, if he has good reason for doing so, may consider a single employee for redundancy.' and that 'there will be cases where it is reasonable to focus upon a single employee without developing a pool or even considering the development of a pool'.
50. The House of Lords case of **Polkey v AE Dayton Services Ltd 1988 ICR 142, HL** established that procedural fairness is an integral part of the reasonableness test now found in s98(4) ERA. Failure to follow correct procedures was likely to mean the dismissal was unfair although there will be exceptional circumstances where an employer could reasonably conclude that following such processes would have been 'utterly useless' or 'futile'. In relation to redundancy dismissals, Lord Bridge, stated that meant 'the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation'.
51. Considering the Employment Appeal Tribunal cases of **Langston v Cranfield University 1998 IRLR 172, EAT** and **Remploy Ltd v Abbott and ors EAT 0405/14** together, the tribunal may need to deal with matters of procedural fairness even if not explicitly raised by the Claimant, depending on whether the Claimant is represented, any explicit agreement between the parties, the pleadings and how these issues have been considered in advance of the substantive hearing. **Osinuga v BPP University Ltd Legal Team 2022 EAT 53** confirmed there was no inconsistency between these two decisions. In that case the Claimant did not have professional legal representation and there was no record of any discussion around procedural fairness issues, therefore these issues had not been expressly excluded and the employment tribunal erred in failing to consider them.

### Conclusions

52. In this matter, there was no dispute that the Claimant was an employee with more than two years continuous service and no claim that she was dismissed for an automatically unfair reason. It was also agreed that the Claimant was dismissed.
53. Therefore, applying the above legal principles to this case, the first question I have answer is whether the Respondent has discharged the burden of establishing that reason, or principal reason, for the dismissal of the Claimant was redundancy. I need to determine whether a requirement of the Respondent's business for employees to

carry out work of a particular kind had ceased or diminished. I then need to consider whether the Claimant's dismissal was caused wholly or mainly by this state of affairs.

54. I conclude that the Respondent did establish that the requirements of the business for employees, or in this case employee, to carry out work of a particular kind, namely operations management, had diminished for the following reasons:

52.1 the impact of covid made Mr Chandarana reflect on his business and the changes he needed to make to ensure success;

52.2 Mr Chandarana employed Mr Coyle with a view to introducing efficiencies by automating aspects of the business which had the impact of automating tasks that the Claimant had previously carried out;

52.3 the Claimant was struggling to find sufficient work to keep her occupied on return from a period on furlough;

52.4 the role of executive assistant was distinct from operations manager and, whilst the executive assistant did assume some of the Claimant's responsibilities, it was not a similar role and did not replace the Claimant's role.

55. I highlight that in order to satisfy the definition of redundancy the work needs to have 'diminished' and not necessarily ceased entirely. The fact that the Claimant did have tasks to do whilst on return does not mean that there could not be a redundancy situation.
56. Turning to consider whether this was the reason, or primary reason, for dismissal, in evidence there was mention of two potential conduct or performance issues. Mr Chandarana gave evidence that neither of those two issues were relevant to his decision to make the Claimant redundant. The Claimant does not allege that they did form part of Mr Chandarana's decision making. I agree and do not find that they had any relevance on his decision making.
57. Evidentially there is no reason to reject Mr Chandarana's evidence about the reason for dismissal. Therefore, I am satisfied that the Respondent had a genuine belief that the reason for dismissal was redundancy and this was the sole reason.
58. I then need to consider whether the decision to dismiss the Claimant was a reasonable one for the Respondent to make.
59. The Claimant raises two points in relation to procedural fairness. Firstly, she was not shown any documents or evidence to prove that the need for redundancy was genuine. Secondly, she did not have the selection process explained to her.
60. In relation to the first point, whilst providing evidence to support an employer's reasoning to aid the employee's understanding of the reasons could clearly assist in ensuring that the employee understood the position, a failure to provide documentary evidence does not necessarily render the process procedurally unfair. This is particularly so where, on the Claimant's own account she was struggling to find sufficient work to fill her days.

61. In relation to the second point, the Respondent only employed one operations manager and the diminished need was the need for an operations manager to conduct certain tasks. In these circumstances, I find that it was reasonable to consider a single employee for redundancy and therefore there was no selection process from a pool of employees to explain to the Claimant.
62. The Claimant did not have professional legal representation and made statements that she thought the whole process was unfair. The Respondent wisely gave significant evidence about the process, including disclosing the relevant documents and calling Mr Coyle to discuss the appeal process. Therefore, I consider it appropriate for me to consider procedural fairness in general.
63. The Respondent is a small business, employing between five and nine people at any one time. Mr Chandarana explained that he had never made anyone redundant before and so had engaged the services of an external consultant to support him through the process. The Claimant was informed about the risk of redundancy and there was sufficient opportunity to consult. Mr Chandarana had explained his concerns about the lack of tasks for the Claimant. After the Claimant was given formal notice of the risk of redundancy, there was then a consultation period. The Claimant was offered the opportunity to come up with an alternative solution but was unable to do so. The Claimant was informed of her right to bring a representative to the redundancy meeting and did have her union representative present. She had the opportunity to have her say before a final decision was taken. Meetings were rearranged to ensure that the Claimant and her union representative could attend.
64. The Respondent made an offer of alternative employment which the Claimant refused. The Respondent did not argue that the Claimant was not entitled to her statutory redundancy pay due to this decision, rightly so as the role would have been a demotion on lower pay and so was not a reasonable alternative. However, there is no obligation to offer suitable alternative employment if it is not available and I consider the steps the Respondent took in this regard in considering whether there was an alternative role available for the Claimant as reasonable in the circumstances.
65. The Respondent offered an appeal process. This was far from an ideal appeal process for the following reasons. Firstly, Mr Coyle was asked to be the decision maker for the appeal. An appeal should be held by someone more senior to the original decision maker, which Mr Coyle is not. Secondly, it was Mr Coyle's automation project which led to the diminished need for an operations manager.
66. However, the Respondent had engaged an external consultant and they provided advice throughout the redundancy and appeal process. Mr Coyle took steps to ensure that the Claimant had the opportunity to put forward her best appeal, adjourning one meeting to provide her with another opportunity to formulate her grounds of appeal. An alternative, and preferable, option to Mr Coyle chairing the appeal would have been to engage an external appeal officer for the appeal process. However, taking into account the fact that there was no unfairness in the original decision to be remedied by an appeal and the size of the Respondent, the errors in the appeal process do not mean that the process fell out of the range of reasonable processes.

67. I have to decide whether the dismissal fell within a range of reasonable responses, both procedurally and substantively. I find that it did for the reasons set out above. Therefore I find that the complaint of unfair dismissal is not well founded and the claim is dismissed.
68. I understand that the Claimant will be disappointed by this result. In redundancy cases there is an inevitable sense of unfairness on the part of the Claimant. The Claimant had clearly been a dedicated employee, proud of her work for the Respondent. In oral evidence both the Claimant and Mr Chandarana described how challenging the process had been for them and understandably so as they had worked together for over 14 years.

**Employment Judge Whittall  
Date: 8 June 2023**