



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Hughes

v

A&J Wealth Management Ltd

Heard at:

Reading (by CVP)

On: 17 and 18 July 2023

Before:

Employment Judge Partington

Appearances

For the Claimant: In person

For the Respondent: Michael Salter, Counsel

JUDGMENT having been sent to the parties on 21 August 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 of unfair dismissal brought by Mr Adam Hughes against his former employer A & J Wealth Management Ltd.
2. The essence of the claimant's claim is that he was unfairly dismissed because there was no real redundancy situation and the reason he was given for being made redundant was not the real reason.
3. Mr Hughes also contends that the process by which he was made redundant was unfair, predetermined and was a sham.

The issues

4. The issues agreed by the parties to be in contention are that:
 - 4.1. The claimant does not accept there was a redundancy situation;
 - 4.2. The claimant does not accept that the reason for his dismissal was redundancy;
 - 4.3. The respondent did not follow a fair process. In particular, it is alleged there was:
 - 4.3.1. inadequate warning of the proposed redundancy of the claimant's role;

- 4.3.2. no evidence of any procedure recorded in writing up to the point of placing the claimant at risk on 10 February 2022;
- 4.3.3. no statement of closure of the Investment Management Unit and instead an alleged 'proposal';
- 4.3.4. continual confusion of the company about the real reason for redundancy;
- 4.3.5. subsequent deceit and concealment around the real reason for redundancy;
- 4.3.6. delayed and no meaningful redundancy consultation;
- 4.3.7. a rushed and disingenuous consultation process;
- 4.3.8. a predetermined decision to dismiss.

Findings of fact

- 5. Turning first to whether there was a genuine redundancy situation, I find there was a genuine redundancy situation, for the following reasons.
- 6. The claimant's role was Commercial Development Director, and it is my finding that he was principally responsible for leading the Investment Management Team. It is clear from the board minutes and witnesses that the Investment Management function had been shut down and therefore there was a reduced requirement for the role held by the claimant.
- 7. The claimant contends there were other aspects to his role such as responsibility for HR, legal affairs and compliance matters, which were ongoing and therefore there was no redundancy situation. However, I do not find that the claimant's role was principally HR, legal affairs or compliance matters or a combination thereof. The witness evidence and contemporaneous documents show that:
 - 7.1. There were, at various points, a dedicated HR lead. Whilst I accept the claimant undertook aspects of HR from time to time I do not find this was the mainstay of his role.
 - 7.2. Regarding legal affairs, again I do not find this to be the mainstay of the claimant's role though accept he had responsibility for specific legal matters from time to time.
 - 7.3. Regarding compliance, there was a specific compliance head in place since 1 April 2021, Mr John Amore.
- 8. This is reflected in contemporaneous documents. The board minutes on 2 August 2021 show that compliance reporting information was provided by Mr Amore; HR reporting was provided by Ms Booth; whilst new business and investment management reporting was provided in large part by the claimant.
- 9. Board minutes on 18 October 2021 again show that compliance reporting was provided by Mr Amore. In relation to HR, Ms Booth had resigned and there was a handover to Sonia Oosthuizen. The investment report was provided by

the claimant with input on the investment managers.

10. The 22 November 2021 board minutes show the compliance report was provided by Mr Amore. There did not appear to be any material contributions from the claimant at this board meeting.
11. The contemporaneous documents therefore support the respondent's contention given in witness evidence and in the various redundancy documents, that the main areas which the claimant dealt with were not compliance, HR, or legal, but investment management.
12. I was not shown any compelling evidence by the claimant to dissuade me that the investment management role formed the core part of his role.
13. I find, therefore, that at the point at which the claimant was put at risk of redundancy, the core part of his role was leading the Investment Management Team and that once this team was disbanded there was a significant reduction in the claimant's responsibilities.
14. Turning next to the issue of whether or not there was adequate warning of the claimant's proposed redundancy, notwithstanding the claimant's assertion that the prospect of redundancy had been raised by Mr Jones, the Respondent's Managing Director, as early as 23 November 2021, it is clear from the documentary evidence and accepted by the claimant that notice of the proposal to make the claimant redundant began on 10 February 2022. The first formal consultation meeting was on 17 February 2022. The second formal consultation meeting was on 7 March 2022 which was followed up with a letter on 10 March 2022. There was then a final redundancy consultation meeting on 14 March 2022 with the redundancy confirmed on 16 March 2022. It is my finding that adequate warning of the proposed redundancy was provided by the respondent to the claimant.
15. The next issue is the claimant's contention that the respondent did not have a written procedure relating to the events leading up to the point at which the claimant was put at risk of redundancy on 10 February 2022. My finding of fact is that there was no procedure in writing relating to the respondent's assessment about the ongoing viability of the investment management part of the business and the impact that that would have on the claimant's role. However, that is separate from the redundancy process and therefore there is no breach of the relevant law relating to following a fair redundancy procedure arising from this.
16. The next issue is the claimant's contention that there was no statement of closure of the Investment Management Unit and instead only an alleged proposal to close it. My finding of fact is that the financial performance of the Investment Management Unit had clearly been a concern for the respondent from as early as 18 October 2021 as noted in the board minutes of that date. I was not persuaded on the evidence before me that at the board meeting on 22 November 2021 that a firm decision to close the investment management part of the business was made. However, what is clear from the minutes is that the financial performance of the investment management part of the business was still a major concern to the respondent and that a member of the Investment Management team had just resigned. Whilst I cannot pinpoint on the papers a statement to close the Investment Management Team, my

finding of fact is that it was closed as shown by the fact that the three investment managers were either let go, resigned or reassigned.

17. The next issue concerns the alleged confusion about the real reason for redundancy. My finding of fact in this regard is that Mr Jones did communicate to the claimant that the buyer may not want the claimant or any other senior managers of the investment management team. I also find as a matter of fact that Mr Posgate clarified that the claimant had not been singled out specifically by the buyer in this regard. I make this finding because I found Mr Posgate to be a reliable and honest witness. Indeed, the claimant has been complimentary of Mr Posgate's honesty and integrity during this hearing. I am therefore persuaded by Mr Posgate's evidence in this regard and as set out at paragraph 17 of his witness statement.
18. I make a further finding of fact that at the meeting on 17 February 2021 that Mr Jones told the claimant that the prospective buyer did not want the claimant and that was the reason for the claimant's redundancy. However, I accept Mr Posgate's evidence for the reasons pertaining to his reliability that I have already given, that he clarified the position and explained the reason for redundancy was in light of the review of the senior management structure following the closure of the investment management team and profitability issues of that team as set out in paragraph 22 of Mr Posgate's witness statement.
19. I go on to find that notwithstanding the misleading statement by Mr Jones, the reason relied on by the respondent for the claimant's redundancy was the reason given by Mr Posgate and not the reason provided by Mr Jones. I make this finding because it is clear from the various board minutes that the investment management team's profitability had been a concern for some time and at least since 18 October 2021. The investment management team had been closed down and the written redundancy documents are all consistent with this explanation.
20. Moving on to the next issue regarding alleged subsequent deceit and concealment around the real reason for redundancy, my finding of fact in this regard is that Mr Jones did seek to deny that he had told the claimant that the reason for the claimant's redundancy was because the buyer did not want to retain the claimant. Indeed, that denial is recorded in the appeal hearing minutes and when the claimant put this allegation to Mr Jones in cross examination, Mr Jones' reply was evasive and did not dissuade me that Mr Jones had made such a denial. However, I also find that notwithstanding Mr Jones' denial, the reason for redundancy was the reason set out by Mr Posgate and in the written documents, for the reasons I have already given.
21. The next issue is the alleged delay and lack of meaningful consultation. My finding here is that the consultation was not delayed. I do not see that there was an earlier point at which the redundancy consultation should have begun. My finding of fact is that notwithstanding the misleading message given by Mr Jones for the redundancy, ultimately there was meaningful consultation. A redundancy process was followed, points were raised by the claimant along the way which were considered and addressed by the respondent. That is supported by the documents in the bundle that a redundancy consultation process was followed and the various meeting minutes demonstrate that the claimant had an opportunity to raise issues, those issues were investigated

and considered, and an outcome provided to the claimant. I also found the witness evidence during the hearing of Mr Posgate and Mr Moore to corroborate their written documents and that they were credible witnesses.

22. The next issue in contention is that the consultation process was rushed and disingenuous. My finding of fact is that the consultation process was not rushed nor disingenuous for the reasons given above.
23. The next issue is that the decision to dismiss was predetermined. My finding of fact in this regard is that the decision finally to terminate the claimant's employment was not taken prior to the outcome of the redundancy consultation. Whilst there were numerous discussions leading up to this point about the ongoing viability of the investment part of the business and latterly the claimant's role, I did not find any evidence that a final decision regarding the claimant's role had been made prior to the outcome of the consultation process.

The law

24. Section 139 (1)(b) of the Employment Rights Act sets out the legal test for a redundancy situation. I restate it here for ease of reference.

“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.”

25. I now set out the legal test for fair dismissal by reason of redundancy. That is set out at s.98(1)(b) of the Employment Rights Act 1996. I quote the relevant section below:

“98 General.

- (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.”

26. The final relevant element of this test is set out at section 98(4) of the Employment Rights Act 1996 which I summarise 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...”

27. I have regard to the principles set out in *Iceland Frozen Foods Ltd v Jones* 1983 ICR 17, EAT:

‘We consider that the authorities establish that in law the correct approach for the... tribunal to adopt in answering the question posed by [S.98(4)] is as follows:

- (1) the starting point should always be the words of [S.98(4)] themselves;*
- (2) in applying the section [a] tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the... tribunal) consider the dismissal to be fair;*
- (3) in judging the reasonableness of the employer’s conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;*
- (4) in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;*
- (5) the function of the... tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.’*

28. Finally, I note the House of Lords’ decision in *Polkey v AE Dayton Services Ltd* 1988 ICR 142, HL, which establishes procedural fairness as an integral part of the reasonableness test under S.98(4).

Application of law to findings of fact

29. I find that there was a redundancy situation under s139 Employment Rights Act, based on my findings of fact at paragraphs 6 - 13 above.

30. I find that the claimant’s dismissal was by reason of redundancy based on my findings of fact at paragraphs 17-20 above.

31. Having found that there was a redundancy situation, and that the claimant’s dismissal was by reason of redundancy, I go on to find that given the size and resources of the respondent, it acted reasonably in treating redundancy as the reason for dismissal in the circumstances, having followed a fair process for the reasons given at paragraphs 14, 15,

21, 22 and 23 above. Accordingly, I find that the decision to dismiss was within the band of reasonable responses.

Employment Judge Partington

Date: 9 October 2023

Judgment sent to the parties on

.12 October 2023.....

.....
For the Tribunal office