



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr I McNish

GreenSquareAccord Limited

HELD AT Birmingham

ON 1 December 2023

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: No appearance

For the respondent: Helen Harley (People Partner)

JUDGMENT

1. The claimant's claim for unfair dismissal fails and is dismissed.
2. The correct name of the respondent is GreenSquareAccord Limited.

REASONS

Background

1. The claimant brought a claim for unfair dismissal following the termination of his contract of employment by the Respondent on 10 January 2023 by reason of redundancy.

2. The respondent is a large provider of housing, regeneration, support and commercial services across the Midlands, Wiltshire, Oxfordshire and Gloucestershire.

Evidence and documents

3. The claimant did not attend the hearing today. At 9.28am he emailed the Tribunal to say that he would not be able to take part via video link as his computer was damaged by a drink being accidentally knocked over onto it. He said that he was sending his email via his phone. The clerk emailed the claimant to say that he should join via his telephone but the claimant did not respond to the email. The clerk also tried to call the claimant on the two telephone numbers provided by the claimant but was not able to make contact with the claimant. As such, the start of the hearing was delayed until 11.15am and the claimant was emailed about the delayed start via email. However, the claimant still did not attend. As such, I decided that it was in line with the overriding objective to proceed in the claimant's absence¹.
4. I heard evidence from David Norris – Head of Construction; Mrs Jaswinder Sandhu – HR Advisor; Mr Kevin Trow – Construction and Technical Director; Mrs Melanie Hulbert – ER Specialist for the Respondent. In addition, I was presented with a bundle of some 114 pages. The claimant did not provide the Tribunal with a copy of his evidence or statement.
5. Mrs Hanley confirmed to me that the claimant was originally employed by Accord House Association Limited which changed its name to GreenSquareAccord Limited. I am satisfied on the information before me that the correct name of the respondent is GreenSquareAccord Limited.

Issues

6. The issues for me to consider were:
 - 6.1 What is the correct name of the respondent?
 - 6.2 What was the reason or principal reason for dismissal? The respondent says the reason was redundancy.
 - 6.3 If the reason was redundancy, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the

¹ After I had made my decision and the hearing was reconvened for me to deliver my decision the Claimant joined the hearing. I explained that I had already heard the evidence and made my decision which I would deliver orally and then would be sent in writing.

dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

- 6.4 It will usually decide, in particular, whether:
- 6.4.1 The respondent adequately warned and consulted the claimant;
 - 6.4.2 The respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - 6.4.3 The respondent took reasonable steps to find the claimant suitable alternative employment;
 - 6.4.4 Dismissal was within the range of reasonable responses;
 - 6.4.5 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 6.4.6 If so, should the claimant's compensation be reduced? By how much?

Facts

7. I make the following findings of fact :
- 7.1 The claimant commenced employment with the Respondent on 5 October 2020.
 - 7.2 He was employed as a Site Manager in the respondent's Construction Services (Midlands) team. The Site Manager role is responsible for the safe and efficient construction of houses. The role managed the Assistant Site Manager and some agency workers.
 - 7.3 The claimant reported to James Barrett, Project Manager.
 - 7.4 The respondent's structure consisted of Project Manager, Site Manager, Assistant Site Manager and Foreman. The Project Manager has overall responsibility for approximately 3 different construction sites at any one time.
 - 7.5 On 19 October 2022 the claimant and 3 other Midlands based Site Managers were invited to a meeting and were advised that their roles were at risk of redundancy, due to the current financial climate, such as the rising costs of materials. The claimant and his colleagues were advised that a financial review of the business meant that some development projects were either delayed or placed on hold and those that continued had to be financially viable to continue. The result of the review was that staffing structures had been reviewed and the decision made to delete the Site Manager role from the Midlands region. The respondent proposed that Project Manager had capacity to manage projects without the need for a Site Manager.
 - 7.6 The following day the respondent wrote to the claimant to confirm that his role was at risk of redundancy and he was

- invited to his first consultation meeting on 21 October 2022. The claimant was advised of his right of representation at the meeting.
- 7.7 The consultation meeting duly took place on 21 October 2022 at which the business case for the redundancy was explained to the claimant and he was given the opportunity to make representations.
- 7.8 Following the meeting the claimant was sent a list of vacancies. The claimant was invited to visit the site if he was interested in any of the vacant roles.
- 7.9 On 28 October 2022 the claimant was invited to a final consultation meeting on 4 November 2022 and advised of his right to be accompanied
- 7.10 On 3 November 2022 the claimant and the other Site Managers at risk of redundancy were advised that there was a vacancy for an Assistant Site Manager role. The claimant confirmed that this was something he was interested in.
- 7.11 A final consultation meeting took place on 4 November 2022 at which the respondent offered the claimant the role of Assistant Site Manager at a salary of £45,000.
- 7.12 The offer was confirmed in writing on 8 November 2022 and was subject to a trial period of 4 weeks until 9 December 2022. The claimant accepted the offer on 9 November 2022.
- 7.13 On 14 November 2022 the claimant indicated that he wished to raise a grievance as he had been told by the Project Manager that the claimant was transferred to his site as he was lazy. He also indicated that he wished to rise an appeal against having to take a demoted role.
- 7.14 The claimant was invited to an appeal hearing on 19 December 2022. On 16 December 2022 the claimant indicated that he did not wish to proceed with his appeal. On the same day the respondent extended the claimant's trial period as the claimant had been absences from work totally 8 days. This was to ensure that the claimant had a full 4 weeks trial period.
- 7.15 On 3 January 2023 the claimant was invited to a meeting to discuss the trial period. The claimant was informed that the respondent would be confirming or failing the claimant's trial period as Assistant Site Manager at the meeting. The claimant was advised of his right to be accompanied.
- 7.16 In the event the review meeting did not take place until 10 January 2023. The respondent took the view that the trial period had not been successful and that as there were no other suitable alternative roles available. As such, the claimant was informed that his employment would be terminated on the grounds of redundancy that day and that he would be paid in lieu of his notice.
- 7.17 On 20 January 2023 the claimant appealed against the original decision to make his role of Site Manager redundant.

- 7.18 The claimant was invited to an appeal hearing on 2 February 2023 and advised of his right to be accompanied.
- 7.19 An appeal hearing during took place at which the claimant indicated that his role was being undertaken by Project Manager and the fact that the respondent had recruited a Groundworks Foreman who had started work on 5 December 2022.
- 7.20 During his evidence Mr Norris confirmed that the respondent had taken out the layer of Site Manager and Mr Barratt was in a more senior position of Project Manager which he had continued with. Mr Norris accepted that a Groundworks Foreman had been recruited but this was a much more junior position, was temporary in nature and the claimant did not have the skills for this role. The Groundworks Foreman was not undertaking the role the claimant had been doing.
- 7.21 The claimant was advised on 20 February 2023 that his appeal was not successful.

Applicable law

8. Section 98 (1) Employment Rights Act 1996 provides that 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 principle reason for the dismissal).*
- (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.*

A reason falls within the subsection if it –

- (c) *is that the employee was redundant,*
9. Section 98(4) provides that 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 reasons shown by the employer) -
- (a) *depends on whether in the circumstances (including the size and administrative resources of the employers 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.*

10. The guidelines set out in the case of **Williams and ors -v- Compare Maxim Limited 1982 ICR, 156, EAT** apply in determining whether the respondent followed a fair procedure in terminating the claimant's employment on the grounds of redundancy. The EAT stressed in this case that in determining the question of reasonableness it is not for the Tribunal to impose its own standards and decide whether the employer should have behaved differently but instead it should ask whether "*dismissal lay within the range of reasonable conduct which a reasonable employer could have adopted*". The factors to be taken into account in answering this question are:
 - 10.1 whether the selection criteria were objectively chosen and fairly applied;
 - 10.2 whether employees were warned and consulted about the redundancy;
 - 10.3 whether, if there was a union, the union's view was sought;
 - 10.4 whether the employer has considered the question of alternative employment as an alternative to redundancy.

11. The case of **Polkey -v- A E Dayton Services Limited 1987 IRLR 503 HL** indicates that generally an employer will not have acted reasonably in treating a potentially fair reason as a sufficient reason for dismissal unless or until it has carried out certain procedural steps which are necessary, in the circumstances of that case, to justify the course of action taken. In applying the test of reasonableness in Section 98 (4) the Tribunal is not permitted to ask whether it would have made any difference to the outcome if the appropriate procedural steps had been taken, unless doing so would have been "futile". Nevertheless, the **Polkey** issue will be relevant at the stage of assessing compensation. **Polkey** explains that any award of compensation may be nil if the Tribunal is satisfied that the Claimant would have been dismissed in any event. However, this process does not involve an "all or nothing" decision. If the Tribunal finds that there is any doubt as to whether or not the employee would have been dismissed, the **Polkey** element can be reflected by reducing the normal amount of compensation accordingly.

Conclusions

12. In reaching my conclusions I have considered all the evidence I have heard and considered the bundle in its entirety. I also considered the oral submissions made by Mrs Harley.

13. I am satisfied that the reason for the claimant's dismissal was redundancy. I am therefore satisfied that the respondent had a potentially fair reason for dismissal under Section 98(2) of the Employment Rights Act 1996.

14. The first issue is whether the respondent followed a fair procedure. In this particular case, whether the respondent had objective selection criteria. In this case as all Site Managers were made redundant and the question of selection did not arise; I am satisfied that the claimant was warned and consulted about the redundancy and the respondent considered the question of alternative employment as an alternative to redundancy. I accept the respondent's assertion that it was not reasonable to offer the claimant the Groundworks Foreman role given that it was of a temporary nature, 2 rungs below the claimant's role and required specialist skills the claimant did not have. Given the difficulties relating to the alternative employment I accept that it was reasonable for the respondent to bring the trial period to an end.
15. I conclude in all the circumstances that a fair procedure has been followed by the respondent and that the dismissal is a fair and reasonable one taking into account equity and the substantive merits of the case. The claimant's complaint of unfair dismissal therefore fails and is dismissed.

01 December 2023
Employment Judge Choudhry

Notes

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>