EMPLOYMENT TRIBUNALS

JUDGMENT

BETWEEN

CLAIMANT		RESPONDENT
MS M U CHIGBOH-ANYADI	V	BISHOP LLOYD & JACKSON SOLICITORS LIMITED

HELD AT: LONDON CENTRAL (BY VIDEO) **ON: 7 SEPTEMBER 2023**

EMPLOYMENT JUDGE: MR M EMERY

REPRESENTATION:
For the claimant: Mr R Johns (counsel)
For the respondent: Ms K Sheridan (counsel)

JUDGMENT

The Tribunal declares that the claim of unfair dismissal is well founded and succeeds.

REASONS

The Issues

1. The claimant is a solicitor, the respondent a firm of solicitors. The claimant was dismissed because her role was redundant. She challenges her dismissal on the ground that proper consideration was not given to an alternative role as a housing solicitor in an associated company, Forster & Forster, and on grounds of procedural unfairness. The respondent does not accept there was another role available, or that the claimant expressed any interest in such a role, or that its process was unfair.

2. Judgment was reached and reasons were provided at the hearing; a request for written reasons was submitted within the 14-day time-limit.

3. The Issues:

   3.1 What was the reason or principal reason for dismissal? The respondent says the reason was redundancy.

   3.2 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 dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

      1.1.1 The respondent adequately warned and consulted the claimant;
      1.1.2 The respondent adopted a reasonable selection decision, including its approach to a selection pool;
      1.1.3 The respondent took reasonable steps to find the claimant suitable alternative employment;
      1.1.4 Dismissal was within the range of reasonable responses.

Witnesses and procedure

4. I heard evidence from Mr Jhanghir Mahmood, solicitor and the Director / owner of the respondent, from Mr Ogo Chime, the Chief Operating Officer of the respondent. I heard evidence from the claimant.

5. This judgment does not recite all the evidence I heard, instead it is confined to the evidence relevant to the issues. It incorporates quotes from my notes of evidence; these are not verbatim quotes but are instead a detailed summary of the answers given to questions.

The relevant facts

6. The claimant joined the respondent in 2018, initially as a housing solicitor, she was also a supervisor for legal aid purposes. After the Grenfell Tower disaster, the respondent set up a Grenfell Tower Inquiry Team (GTI Team) representing affected families. The GTI Team comprised 5 solicitors - 3 Grade A solicitors including Mr Mahmood and the claimant), two Grade C solicitors and 3 paralegals. The claimant worked in the GTI Team from its set-up to the date of her redundancy.

7. It was always known that the GTI Team's work would draw down. Mr Mahmood planned for this. In November 2021, he purchased another solicitor's firm Foster & Foster, the work of this firm was predominantly social welfare law, including housing. In a memo he sent to all staff he said that the GTI work would come to an end, that F&F was purchased *" … to make sure that … we would be fully prepared to protect the jobs of our staff…".* It mentioned other steps to protect jobs, including diversifying the work of the respondent. Mr Mahmood's evidence

was that he bought Foster & Foster to for staff to *"transition to … if the work was available".*

8. I accept Mr Mahmood's evidence that the F&F practice had not grown as fast as he would have liked by late-2022

9. From November 2021 onwards, there were numerous discussions at weekly meetings of the GTI Team about the end-date of the work. Mr Mahmood said that staff were *"considering if they wanted to move to F&F."* he said that employees were given updates and were fully aware that the GTI Team's work would be ending.

10. In February 2022 there was a discussion between the claimant and Mr Mahmood about a vacancy at F&F. Mr Mahmood's evidence was *"… and we asked her if she wanted to apply, and she said no, she only wanted to work on the Inquiry. The impression she gave was she did not want to do legal aid work…".* In her written response at the time, she told Mr Mahmood that it would *"not be viable"* for her to accept a Housing Supervisor position *"as I wish to continue"* with the GTI Inquiry work until the end of the year (76). In her evidence she said she believed it would *"not be fair"* to her clients were she to leave the GTI Team at this time. I accepted that this was her view at this time.

11. On 21 September 2022 Mr Mahmood put forward a proposal to the Inquiry Solicitor for work he considered the GTI Team needed to undertake, including a review of disclosure and experts reports. He proposed a team of 3 solicitors to undertake the work, this did not include the claimant. The Inquiry Solicitor's 23 September 2023 response said that the Inquiry will *be "very cautious"* about the work required, that the work on final submissions should be "*well developed"* and that there were not *"any circumstances"* in which a review of reports and disclosure would be required.

12. The Inquiry Solicitor's response was discussed amongst the GTI Team. At this date all the GTI Team were aware it would shortly be disbanded, and in the absence of alternative work this would involve redundancies. In late September 2022 a paralegal on the GTI Team transferred to F&F because there was *"no GTI work"* (134).

13. I accept Mr Mahmood's evidence that the end-date for the majority of the GTI Team's work would be 31 October 2022, that the only work in October 2022 would be finalising written submissions, for which little could be charged. I accept that little work has been done by the respondent on the Grenfell Tower Inquiry since this date, that one member of staff is providing ad-hoc work when required on the GTI Team.

14. The claimant was called by Mr Chime and invited to a meeting with Mr Mahmood on 4 October 2022. There was no advance notice that this would be a redundancy consultation meeting, I also accept that GTI Team solicitors would have been expecting a consultation meeting about their future to take place around this time.

15. No notes were taken at the meeting. What was said at the meeting is disputed.

16. The claimant is clear that she was told at the meeting her role was redundant, although a final decision on her dismissal had not been taken. She said that there was a short discussion about F&F, *but "I was made to understand that this was not an option."*

17. Questions to the claimant suggested that she was *"reminded"* at the 4 October 2022 meeting that she had said she was not interested in legal aid work; she reiterated that she was told a role at F&F was *"not an option"* after she brought up this role as an option.

18. Mr Mahmood was asked on several occasions what he said about F&F at this meeting, and his evidence varied slightly. For example:

    - *"We did consider F&F, but there was insufficient work at F&F, and she did not say that she wanted to move"*
    - *"We would not have been able to accommodate her in F&F as there was insufficient work".*
    - *"On 4 October we discussed is there any opportunity in F&F that you can do or interested in. C did not express any interest…"*
    - *"The impression she gave was she did not want to go into legal aid work";*
    - *"I said on 4 October that [the GTI work] was coming to an end and we have to consider redundancies if we can't find an alternative role. And I asked is there a role you could do in F&F. Query if she stayed silent or said no – I can't recall her response – but she did not say she would like to take another role in F&F or anything similar".*
    - *"I can't recall what she did say, but I know as a fact she did not suggest working for F&F"*.
    - She was *"non-committal – she did not say she wanted to work for F&F. Had she expressed an interest we would have looked at viability.".*
    - *"If she had said yes we would have discussed and looked at viability. As she did not say yes we did not proceed.".*

19. Mr Chime's evidence was that on 4 October possible opportunities at F&F were discussed *"I recall that the February [2022] offer was mentioned, I also recall that this was revisited and the claimant said that she would like to think carefully about this and come back. And in the follow-up meeting she said she had not got anything to add."*

20. Mr Mahmood accepted that two members of the GTI team transferred to F&F on a secondment. One transferred on 23 November 2022 (136). He said that if the claimant *"had said yes we would have discussed and looked at the viability. As she did not say yes we did not proceed."* He said that had she said yes, they would have *"… looked at whether viable financially, for example part-time. It would have been difficult to accommodate her, but we could have had a conversation on viability, had she said yes."*

21. At appeal, Mr Mahmood's evidence was that the claimant was asked about *"… options at F&F and she did not answer … she said see the grounds of appeal and she did not elaborate on this"*. He said that the appeal notes don't mention

a discussion about F&F because *"the notes don't reflect the totality of the conversation we had .. I accept it could have been recorded better, but several times I said F&F and asked her what areas she wanted to be considered for and she answered see what's in my grounds of appeal".*

22. The letter confirming the claimant's redundancy was dated 13 October 2022; this did not make any mention of F&F, it does mention that there was a discussion about alternative options, that the claimant had *"asked"* what options there were for her, that she did not mention anything else in her follow-up meeting on 5 October. It said that no alternative employment had been identified.

23. The claimant appealed her dismissal. Her grounds of appeal included the following: that the decision to make her redundant was unfair, that the respondent had failed to consider all possible alternatives to redundancy, including within the firm or F&F. It said that the only reference at the 4 October 2022 meeting to F&F was to the discussion in February 2022. She says that the decision was predetermined (108).

24. Mr Mahmood was the decision maker at the redundancy appeal. He justified this by saying we are a *"small management team"* of 3, that the team discusses and make all decisions together. He accepted Rachel Swinnerton, a senior solicitor and manager, could have dealt with the appeal, his justification was that she did not deal with Inquiry work.

25. At the appeal meeting the claimant was asked to elaborate on her grounds of appeal, she referred to her appeal letter. The appeal notes state that Mr Mahmood said *"There was no unfairness. Why do you think that you would have been given alternative employment?"*. Mr Mahmood's evidence was that this was *"not quite written correctly, I asked her 'what alternative employment'".*

26. Mr Mahmood's evidence was that the claimant *"did not say"* she wanted to work at F&F. His evidence was that he did consider alternatives, that the claimant had significant experience in other areas of law *"…We did consider housing – but it was for her to say I want to do this work also."*

27. Mr Mahmood said that if there had been discussions about a role at F&F, it would have involved a pay cut, they could have discussed a part-time role as a caseworker, whether as a consultant or an employee. The claimant's evidence was that if there had been a discussion about F&F, she would have discussed growing the firm with private clients as well as legal aid work. She mentioned that there had been an advert for a housing solicitor role at F&F at the time of her redundancy, *"so the option was there…".*

28. By or shortly after the date of the claimant's redundancy, another Senior Solicitor (Grade A) had been made redundant; as had a Grade C solicitor,. One Grade C solicitor was seconded to F&F on 23 November 2022 , two paralegals from the GTI team were made redundant and were given roles at F&F shortly after.

Closing arguments

29. Mr Johns and Ms Sheridan gave closing arguments. I address their arguments where relevant in the conclusions section below.

The law

30. Employment Rights Act 1996 – Pt X Dismissal

s.94 The right

a. An employee has the right not to be unfairly dismissed by his employer

s.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—

a. …

b. …

c. is that the employee was redundant. …

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 issue

31. Dismissal

a. *Iceland Frozen Foods v Jones [1982] IRLR 439:*

(1) the starting point should always be the words of [s 98(4)] themselves;

(2) in applying the section an [ET] must consider the reasonableness of the employer's conduct, not simply whether they … consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct an [ET] must not substitute its decision as to what 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 [ET]… 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'.'

b. *Dunne v Colin & Avril Ltd UKEAT/0293/16: In order to act fairly in a redundancy situation, an employer is obliged to look for alternative work and satisfy itself that it is not available before dismissing for redundancy.*

c. *Polkey v AE Dayton Services Ltd [1987] 3 All ER 974, HL: "…an employer having prima facie grounds to dismiss for [redundancy] will in the great majority of cases not act reasonably in treating the reason as a sufficient reason for dismissal unless and until he has taken the steps, conveniently classified in most of the authorities as "procedural", which are necessary in the circumstances of the case to justify that course of action. Thus, in the case of … redundancy, the employer will normally not 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 redeployment within his own organisation."*

Conclusions on the evidence and the law

32. It is accepted that at some point the work of the GTI Team was going to wind down, I accepted the respondent's argument that by end September 2022 it was clear that the GTI Team's work would substantially decline in a very short space of time. At this point, the only realistic options available were redundancy or a possible transfer or secondment to F&F.

33. I accept that the general contents of the Inquiry Solicitor's email dated 23 September 2023 was known to the GTI Team after its receipt, and the message was that the Inquiry would not pay for costs beyond final submissions which were expected to be nearly complete. I accept that this message was made known to the GTI team in advance of the individual consultation meetings.

34. In this context, it would have been preferable for the respondent to have sent a letter to the claimant and other team members to warn them they would be asked to attend individual consultation meetings. Such a letter can avoid future disputes.

35. I considered the legal test, noting that this is a firm of solicitors, that the test of range of reasonable responses needs to be considered in relation to a similar employer, similar size and resources. In this context, knowing what the GTI team knew at this time, it was not outside of the range of reasonable responses for Mr Chime to call individual members of staff to say there was a meeting with Mr Mahmood about the GTI work.

36. I also concluded that speed was of the essence for the respondent at this stage. Following receipt of the Inquiry Solicitor's email, it was now clear the GTI Team's work had largely come to an end.

37. I accept that at the 4 October 2022 meeting it would have been sensible to take notes and send them to the claimant to agree, precisely to avoid the issues in this hearing. As a firm of solicitors the respondent is aware of the need for documented evidence, it is good HR practice. A similarly sized and resourced employer would have taken notes.

38. I also accept that, in itself, a failure to take notes would not make a redundancy process unfair, or outside the range of reasonable responses. It may be good practice, but it is not inherently unfair not to do so.

39. The issue that arises is the dispute about what was said, and the implications. I carefully considered the evidence. I conclude that at the meeting on 4 October 2022 Mr Mahmood was not prepared to suggest a role at F&F, that the claimant did raise the possibility of a role at F&F, and it was briefly discussed. I concluded this by his answers to questions and the answers he gave at the appeal hearing ("why do you think … alternative employment?"); and by his failure to address the points in the claimant's appeal, in particular a potential role at F&F. I did not accept she expressed no interest, as Mr Mahmood suggested; housing work was an area she was willing to consider.

40. I conclude that Mr Mahmood was of the view that the claimant had turned down this role before, and that she was not particularly interested in taking it on. I conclude that the claimant did refer to F&F, but that Mr Mahmood appeared at best ambivalent, that the claimant was made to understand that this was not an option. I consider it important that the claimant raised F&F in her appeal letter, but Mr Mahmood was not prepared to engage in the contents of the letter. I concluded that Mr Mahmood's approach indicated he was not interested in progressing this as an option.

41. In closing arguments I was urged by the respondent to conclude that the claimant was not in all respects an accurate witness; I conclude that she was an accurate witness in all material respects.

42. I do not accept the totality of the evidence of the respondent, in particular the repeated suggestion that the claimant failed to raise F&F. It was raised by the claimant; it was Mr Mahmood who gave the clear impression this was not an option.

43. I conclude that at no time was proper consideration given to an alternative role on secondment at F&F.

44. I carefully considered the range of reasonable responses test, the requirement not to substitute my own view. But I concluded it was outside the range of reasonable responses to fail to consider the possibility of an alternative role in the F&F team when this was raised as an issue and the claimant said she would consider such a role. In any fair process, where the aim is to avoid redundancies, it is for the employer to assess whether such a role was available and feasible

and if so inform her, and if not explain why. In his evidence Mr Mahmood accepted this role may have been an option. This exercise was not undertaken.

45. I do not accept Mr Mahmood handing the appeal himself was within the range of reasonable responses of a similarly sized and resourced employer. There was at least one other senior manager who could have handled the appeal, and I did not accept Mr Mahmood's evidence that her lack of experience of Inquiry work meant she could not determine the appeal. This was outside of the range of reasonable responses, and I concluded that a similar sized and resourced employer would have recognised the importance of an independent review of the decision at appeal.

46. I also do not accept that the issue of alternative work was cured by the appeal. The claimant was perfectly entitled to treat the rhetorical question of Mr Mahmood - 'why do you think …' – as the answer to her question. This was not a failure by the claimant to participate in the process, it's an aggressive response to a legitimate issue of appeal. The respondent had a closed mind at appeal. A failure to consider at all her grounds of appeal and discuss them with her amounts to an act outside of the range of responses of a similarly sized and resourced employer.

47. Polkey: Mr Mahmood said at some stages of his evidence that we would have considered the claimant for a role at F&F. I accept that there was a significant prospect of the claimant engaging in consultation for such a position. I accept that a discussion on a potential role would have lasted a further two weeks beyond the actual consultation period before a decision would have been taken.

48. Given the claimant's housing solicitor experience and her views on gaining additional private work, I estimated the prospect of such consultation leading to the claimant gaining a post on secondment from the respondent to F&F to be 85%.

49. I accept that this role may be on a part-time basis and on a lesser salary. I accept also that as a Senior Caseworker was in post, at least initially the claimant would have been employed in a more junior role. I heard no evidence on the likely salary, but, subject to evidence, I conclude it is likely the claimant would have been paid based on the legal aid rate payable for work undertaken by a senior non-supervising solicitor.

50. Given the relative lack of work at F&F, this seconded role would have been on an initial 2 day a week basis increasing after 6 months to a 3 day a week basis. It would have continued on this basis for the foreseeable future.

51. Remedy will be addressed at a Remedy Hearing listed for 11 December 2023.

EMPLOYMENT JUDGE EMERY

Dated: 4 December 2023

Judgment sent to the parties
On

06/12/2023

For the staff of the Tribunal office

Notes

Public access to employment tribunal decisions

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